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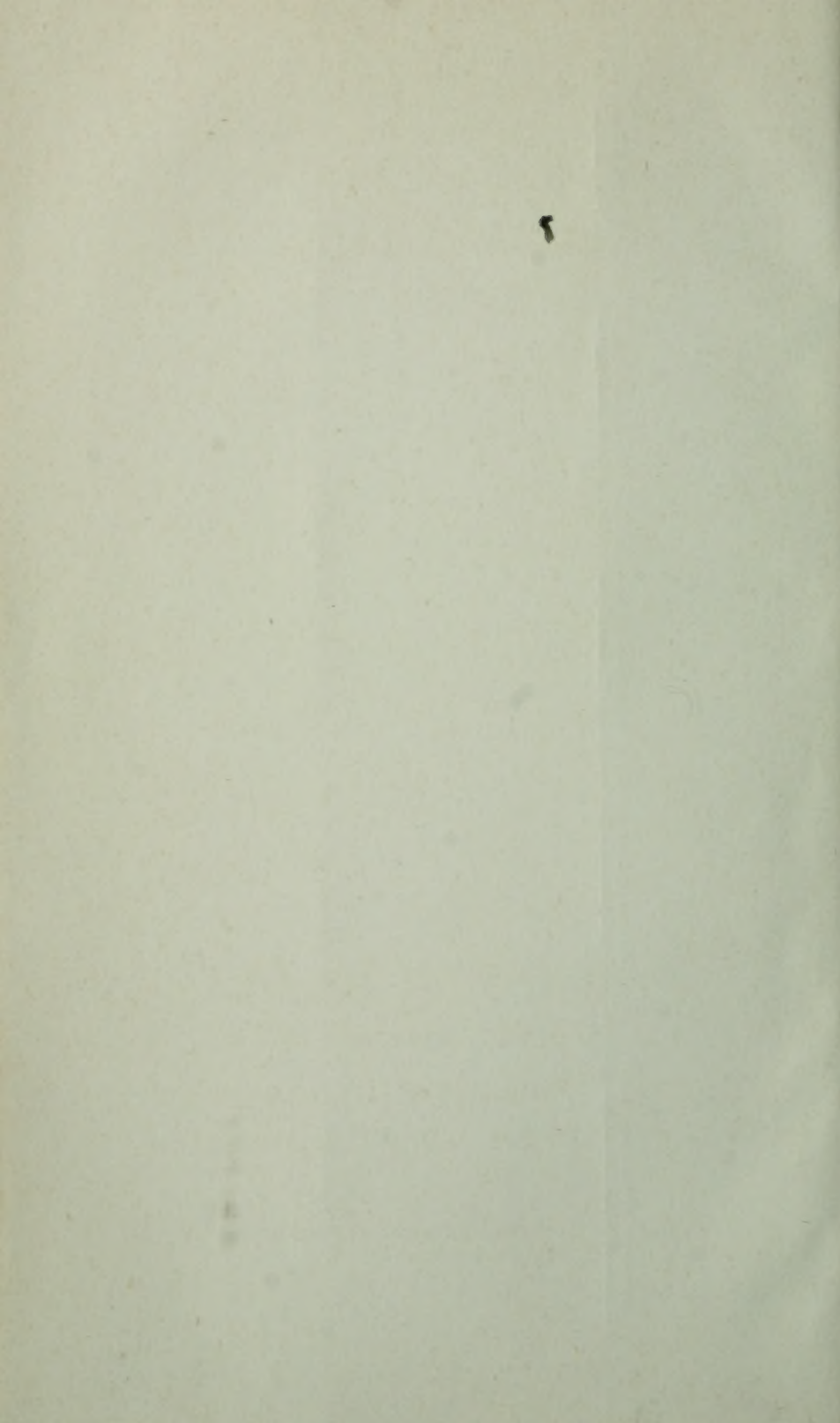
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2007



No. 12300

8591
United States
Court of Appeals
For the Ninth Circuit.

WALTER D. ACKERMAN, JR., individually and as Attorney
General of the Territory of Hawaii and JEAN LANE, in-
dividually and as Chief of Police of the County of Maui,
Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the
County of Maui, and WENDELL F. CROCKETT, individ-
ually and as Deputy to the County Attorney for the County
of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
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Appellees.

Transcript of Record
In Four Volumes

VOLUME I
Pages 1 to 556

Appeals from the United States District Court for the
Territory of Hawaii

FILED

OCT 14 1949

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

BOUSLOG & SYMONDS,
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Honolulu 16, Hawaii.

For the Plaintiffs,
International Longshoremen's &
Warehousemen's Union, et al.

RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii,
Iolani Palace,
Honolulu, T. H.

For the Defendants,
Walter D. Ackerman, Jr., et al.

In the United States District Court
For the District of Hawaii

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union;
TERRITORIAL COUNCIL OF INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union;
JACK KAWANO, individually and as a mem-
ber of the ILWU and as President of the
Territorial Council of the ILWU; DIEGO
BARBOSA, JOHN MAILE, VICTOR DE-
GAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA,
SHIGEYUKI MATSUURA, ABRAHAM
MAKEKAU, ELPIDIO SIRUET, MARI-
ANO BALDUA, NARCISSO SIPE and AN-
TONIO MENDES.

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; INGRAM M. STAINBACK, individu-
ally and as Governor of the Territory of
Hawaii; E. R. BEVINS, individually and as
County Attorney for the County of Maui;
WENDELL F. CROCKETT, Individually and

as Deputy to the County Attorney for the County of Maui; JEAN LANE, individually and as Chief of Police of the County of Maui; CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui, Defendants.

COMPLAINT FOR INJUNCTION; COMPLAINT TO REDRESS DEPRIVATION OF CIVIL RIGHTS; REQUEST FOR HEARING BY THREE-JUDGE COURT

Plaintiffs complain of defendants and allege:

I.

That the International Longshoremen's & Warehousemen's Union (hereinafter referred to as ILWU) and the Territorial Council thereof are

voluntary unincorporated associations and labor unions, having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as daily wage earners in the sugar, pineapple and longshore industries. That the plaintiff Jack Kawano is a member of said ILWU and the President of the said ILWU Territorial Council and brings this action individually and in a representative capacity for and on behalf of said ILWU and Council and the members thereof, and in order to protect and obtain the benefits of the Civil Rights Act and the Constitution of the United States of America and the Amendments thereof for its said members and particularly for the other plaintiffs herein.

II.

That plaintiffs John Maile, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Narcisso Sipe and Antonio Mendes are citizens of the United States. That the plaintiffs Diego Barbosa, Victor Degamo, Basiliso Arruiza, Elpidio Siruet and Mariano Baldua are aliens, and are citizens of the Philippine Republic. That all said plaintiffs are residents of the Territory of Hawaii, members of said ILWU, and are employed generally as daily wage earners in the pineapple industry of the Territory of Hawaii. That all of said plaintiffs other than plaintiff Antonio Mendes are members of races other than the

Caucasian race. That the race of each of said plaintiffs is that set opposite his respective name, as follows:

Plaintiff	Race
Diego Barbosa	Malayan (Filipino)
John Maile	Polynesian (Hawaiian) (Caucasian)
Victor Degamo	Malayan (Filipino)
Harry Kapena Kaopuiki	Polynesian (Hawaiian)
Isami A. Nitta	Mongolian (Japanese)
Ah Sing Ah Ho	Mongolian (Chinese)
James Kia Aikala	Polynesian (Hawaiian)
Shigeru Yagi	Mongolian (Japanese)
Basiliso Arruiza	Malayan (Filipino)
Midori Oda	Mongolian (Japanese)
Shigeyuki Matsuura	Mongolian (Japanese)
Abraham Makekau	Polynesian (Hawaiian) Mongolian (Chinese)
Elpidio Siruet	Malayan (Filipino)
Mariano Baldua	Malayan (Filipino)
Narcisso Sipe	Malayan (Filipino)

That the plaintiff Antonio Mendes is a member of the Caucasian race, but is of Spanish-Peruvian ancestry, and according to the custom and practice of the Hawaiian Islands is considered as a non-Caucasian.

III.

That the defendant Walter D. Ackerman, Jr., during all of the times herein mentioned was and

now is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii.

That the defendant Ingram M. Stainback during all of the times herein mentioned was and now is the duly appointed, qualified and acting Governor of the Territory of Hawaii.

That the defendant E. R. Bevins during all of the times herein mentioned was and now is the duly elected, qualified and acting County Attorney for the County of Maui.

That the defendant Wendell F. Crockett during all of the times herein mentioned was and now is the duly appointed, qualified and acting Deputy to the County Attorney for the County of Maui.

That the defendant Jean Lane during all of the times herein mentioned was and now is the duly appointed, qualified and acting Chief of Police of the County of Maui.

That the defendant Cable A. Wirtz during all of the times herein mentioned was and now is the duly appointed, qualified and acting Circuit Court Judge and Jury Commissioner of the County of Maui.

That the defendants Augustine Pombo and Claude E. Chatterton during all of the times herein mentioned were and now are the duly appointed, qualified and acting Jury Commissioners of the County of Maui.

That the defendants Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Corn-

well, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask during all of the times herein mentioned were and now are the duly appointed, qualified and acting Grand Jurors of the County of Maui.

IV.

That plaintiffs bring and maintain this action pursuant to, and the jurisdiction of this court is founded upon, the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

V.

The instant case presents to this court a case and controversy arising under the Constitution and laws of the United States, and particularly the First, Fifth, Sixth, Fourteenth and Nineteenth Amendments to the Constitution and said Civil Rights Act.

VI.

That plaintiffs herein request that this case be heard and determined by a three-judge court, pursuant to and in conformity with Title 28 USC, Section 380 (Judicial Code, Section 266 amended).

VII.

1) That during all of the times herein mentioned there was and now is a statute of the Territory of Hawaii known as the unlawful assembly and riot statute, being Revised Laws of the Territory of Hawaii, 1945, Chapter 277, Sections 11570-11584, inclusive. That the text of said statute is attached hereto, marked Exhibit A, and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

2) That during all of the times herein mentioned there was and now is in force and effect the Organic Act of the Territory of Hawaii, having as a component part thereof Section 83 relating in part to the composition of juries. That a copy of said Section 83 is attached hereto, marked Exhibit B, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

3) That during all of the times herein mentioned there was and now is in full force and effect as a component part of the Revised Laws of Hawaii, 1945, as amended by the 1945 session laws, Section 9791, relating to the qualifications of jurors, both trial and grand jurors, and Section 9812, relating to the challenging of the Grand Jury. That copies of said sections are attached hereto, marked, Exhibit C, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

VIII.

That from July 10, 1947, to and including July 15, 1947, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian pineapple industry. That the individual plaintiffs, other than Kawano, and the various local unions of the ILWU having members employed in the pineapple industry were on strike against the pineapple industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.

IX.

That on or about July 15, 1947, the individual plaintiffs herein, other than Kawano, were arrested by the defendant Maui Chief of Police Jean Lane and his agents, officers, employees and representatives, and charged with purported violations of said unlawful assembly and riot statute hereinabove referred to. The plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda and Shigeyuki Matsuura were charged pursuant to a complaint, a copy of which is attached hereto, marked Exhibit D, and which complaint is incor-

porated herein by this reference the same as though set forth herein in full immediately hereafter. The plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes were charged pursuant to a complaint, a copy of which is attached hereto, marked Exhibit E, and which complaint is incorporated herein by this reference the same as though set forth herein in full immediately hereafter.

X.

That thereafter, to wit, on or about July 25, 1947, the defendants Ackerman, Stainback, Bevins and Crockett sought to present purported criminal charges framed by said complaints to the defendant Grand Jurors named herein and to obtain from said Grand Jury the indictment of plaintiffs, other than Kawano, for purported violations of said unlawful assembly and riot statutes.

XI.

That prior to July 25, 1947, said Grand Jury had been chosen, selected, formed and composed by the defendants Wirtz, Pombo and Chatterton, acting as the Grand Jury Commissioners for the County of Maui. That said defendants in so selecting, choosing, forming and composing said Grand Jury had violated various statutory and constitutional provisions referred to above and as more particularly set forth hereinafter.

XII.

That thereafter, to wit, on or about July 25, 1947, plaintiffs herein, other than Kawano, made and filed certain motions and challenges in the Circuit Court of the County of Maui, Territory of Hawaii, wherein said plaintiffs sought the disqualification and dismissal of said Grand Jury for the reasons hereinafter set forth.

XIII.

That said motions and challenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XIV.

That unless restrained and prohibited by an injunction issued out of this court, defendants will immediately proceed to indict and place on trial the plaintiffs herein (other than Kawano), for alleged violation of the said unlawful assembly and riot statutes, as described in the complaints Exhibits D and E, and the defendants will purport to act under color of said statutes. That said unlawful assembly and riot statutes, and each and every part thereof, are violative of plaintiffs' civil rights and of the

Constitution of the United States and the amendments thereto, in the following respects:

1) In that said statutes and each and every part thereof prohibit the free exercise by plaintiffs of their rights of speech, press, assemblage, and of peaceful picketing, in contravention of the First, Fifth, and Fourteenth Amendments to the United States Constitution.

2) In that said statutes and each and every part thereof, if enforced against plaintiffs as defendants threaten to do herein, will deprive plaintiffs of their liberty and property without due process of law, in that plaintiffs will be prohibited from exercising their rights of free speech, press and assemblage in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

3) In that said statutes and each and every part thereof constitute a previous restraint upon the free exercise by plaintiffs of their constitutionally protected rights of speech, press and assemblage, in contravention of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and plaintiffs are thus subjected to criminal prosecutions and penalties for the exercise by them of said constitutionally protected rights.

4) In that said statutes and each and every part thereof are criminal statutes and they are so vague, indefinite, arbitrary and unreasonable that they fail to set up any definitely ascertainable standard of

guilt, and fail to apprise plaintiffs of what conduct on their part would subject them to prosecution for violation of said statutes, and therefore said statutes, and their attempted enforcement by defendants against plaintiffs deprive said plaintiffs of liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

5) In that said statutes and each and every part thereof deprive plaintiffs of equal rights, privileges and immunities under the law, namely the rights of free speech, press, assemblage and picketing, in violation of the Civil Rights Act hereinabove referred to.

6) In that plaintiffs are forbidden the rights, privileges and immunities of speech, press and assemblage in publicizing the facts of the labor dispute above referred to while the same prohibition is not applied or enforced against the other disputants in the said strike situation, namely, the employer group, or to other groups in the community.

7) In that the said unlawful assembly and riot statutes are unconstitutional and void in that they violate the freedom of speech, press and assemblage provisions of the First and Fourteenth Amendments to the Constitution of the United States, and attempt to deprive persons falling within their prohibitions, such as plaintiffs, of liberty and property, in violation of the Fifth and Fourteenth

Amendments to the Constitution of the United States.

XV.

That if the defendant Grand Jury is permitted to consider and return indictments against plaintiffs, other than Kawano, said plaintiffs will be deprived of their rights in violation of the Sixth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, the Civil Rights Act, Section 83 of the Organic Act of the Territory of Hawaii, and Sections 9791 and 9812 of the Revised Laws of the Territory of Hawaii, 1945, in the following respects:

1) Defendants Wirtz, Pombo and Chatterton, as the Grand Jury Commissioners of the County of Maui, formed selected, chose and returned said Grand Jury of the County of Maui in violation of the aforementioned constitutional and statutory provisions in that said defendants deliberately, intentionally and knowingly selected said Grand Jurors from amongst mainly the Caucasian and employer groups of the County of Maui, the territorial area over which said Grand Jury exercises jurisdiction.

That of said Grand Jurors approximately 76% are members of the Caucasian race and approximately 24% are members of races other than the Caucasian race. That in the population of the County of Maui approximately 74% are members of non-Caucasian races and approximately 26% are members of the Caucasian race.

That of the plaintiffs in this case and who are defendants in the purported criminal cases which defendants plan to bring, 15 or 93.7% are non-Caucasians, and 1 or 6.7% is Caucasian.

That of the said defendant Grand Jury approximately 89% are persons other than daily wage earners, namely, they are owners, managers, entrepreneurs, or clerical persons associated with the former groups. That of said Grand Jury approximately 11% are laborers or daily wage earners.

That amongst the Grand Jurors who propose to hear the case against plaintiffs none of them is a farm laborer, although approximately 50% of the employed persons of the County of Maui are farm laborers. That all of the plaintiffs herein (defendants in said unlawful assemblage and riot cases) are farm laborers.

That of the said Grand Jurors none are women, although in the County of Maui approximately 40% of the population are women.

That defendants Wirtz, Pombo and Chatterton in choosing, selecting, forming and composing the said Grand Jury have thus intentionally, arbitrarily and knowingly selected said Grand Jury from amongst the male, employer, Caucasian elements of the community and have failed to select Grand Jurors from amongst the non-Caucasian, daily wage earner, farm laborer and female portion of the population. That said Grand Jury is not an impartial Grand Jury and it is not a true, fair or reasonable cross-section of the population nor representative of the community in which said Grand Jury sits.

That because of the facts hereinabove alleged, if plaintiffs are to be subjected to indictment at the hands of said Grand Jury, they will be deprived of an impartial, representative and democratic Grand Jury, in violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and of the said Civil Rights Act.

2) That said Grand Jury has been selected by said defendants Wirtz, Pombo and Chatterton, acting as Jury Commissioners of the County of Maui, in violation of the provision contained in the Organic Act and Section 9791 of the Revised Laws of Hawaii, 1945, and in violation of 8 USCA 44, in that said Grand Jury has been deliberately and intentionally selected by said defendants with regard to race, color and nativity in that a deliberate and overwhelming selection has been made on said Grand Jury of members of the Caucasian race. That said defendants have intentionally, arbitrarily and knowingly completely excluded Filipinos, who are members of the Malayan race, from said Grand Jury, although there are more than 10,000 Filipinos, or 18.8% of the population, in the County of Maui, they being the second largest population group in said County of Maui. That there are a number of Filipinos who are qualified and eligible for service on said Grand Jury, but defendants have failed and refused to ever select or place any Filipino on the said Grand Jury of the County of Maui.

3) That the action of defendants Wirtz, Pombo and Chatterton in failing and refusing to put women on the Grand Jury of the County of Maui

is a direct violation of the Nineteenth Amendment to the Constitution of the United States. That there has never been a woman on the said Grand Jury of the County of Maui. That there are large numbers of women, residents and citizens of the County of Maui, who are qualified to serve as members of said Grand Jury. That the actions of said defendants in completely excluding women from said Grand Jury constitutes a violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, and deprives plaintiffs who are defendants in said unlawful assemblage and riot cases of an impartial, representative and democratic Grand Jury, in violation of their said constitutional rights.

4) That in selecting the aforesaid Grand Jury, the defendants Wirtz, Pombo and Chatterton, as Jury Commissioners of the County of Maui, have deliberately, intentionally and knowingly misapplied and misenforced Section 83 of the Organic Act of the Territory of Hawaii and Section 9791 of Revised Laws of Hawaii, 1945, in that said defendants have failed and neglected to select a representative, impartial or democratic Grand Jury for the County of Maui in the instant case, but on the contrary have selected a Grand Jury which is representative of only a small segment of the population.

XVI.

That the hearings referred to in Paragraph XIII, wherein plaintiffs attempted to challenge, disqualify

and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived plaintiffs of, and refused to permit plaintiffs to have, a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that plaintiffs were denied a full, fair and impartial hearing in connection with said motions and challenges. That it is necessary and imperative that this Court assume jurisdiction in the matter in order that plaintiffs shall have an impartial, representative and democratic Grand Jury, and that they shall be allowed a full, fair and impartial hearing in connection with their said challenges and motions. That by his actions as herein described the said Judge Cristy deprived plaintiffs of the kind of an impartial hearing to which they are entitled under Section 9812 of the Revised Laws of Hawaii, 1945.

XVII.

That insofar as defendants purport to have selected said Grand Jury in conformity with Section

83 of the Organic Act of the Territory of Hawaii and Chapter 195 of the Revised Laws of Hawaii, 1945, said defendants, acting under color of said statutes, have deprived plaintiffs of a representative, impartial and democratic Grand Jury, in violation of the Civil Rights Act, the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States.

XVIII.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assemblage and riot statutes against plaintiffs or submitting the charges against plaintiffs to said Grand Jury and prohibiting said Grand Jury from acting in any way in connection with this case against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That the case therefore is a proper case for injunctive relief. That plaintiffs have no plain, adequate or speedy remedy at law.

Wherefore, plaintiffs, and each of them, pray judgment against defendants, and each of them, as follows:

(1) That a temporary restraining order issue against defendants prohibiting the enforcement by said defendants of said unlawful assemblage and riot statutes, and prohibiting the submission to or consideration of said case by, or return of indictments by said Grand Jury against plaintiffs in

connection with said unlawful assemblage and riot charges.

(2) That a preliminary and permanent injunction issue against defendants to the same effect.

(3) That the Court find and make its order and judgment that the said unlawful assemblage and riot statutes contravene the Constitution and statutes of the United States.

(4) That the Court find and make its order and judgment that the manner of selection and the composition of said Grand Jury, and the attempted submission to it of charges against plaintiffs, contravene the Constitution and statutes of the United States.

(5) That an order to show cause be directed against defendants, and each of them, directing them to be and appear before this Court at a day and hour certain to show cause, if any they might have, why they should not be enjoined as herein prayed for.

(6) That this Court conduct hearings into the method of selection of, and the composition and character of said Grand Jury and make its order disqualifying, dismissing and discharging said Grand Jury.

(7) That this case be heard by a three-judge court.

(8) That the plaintiffs have their costs of suit

herein, and such other and further relief as is meet and just in the premises.

Dated: November 29th, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ HERBERT RESNER,

Attorneys for Plaintiffs.

Territory of Hawaii,

City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, deposes and says:

That she is one of the attorneys for the plaintiffs named in the within and foregoing complaint; that she makes this affidavit for and on behalf of plaintiffs as none of said plaintiffs are at present located within the City and County of Honolulu, T. H., wherein affiant maintains her office; that she has read said complaint and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated on information or belief, and as to such matters she believes it to be true.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 1st day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,

Notary Public in and for the
Territory of Hawaii.

My Commission expires: July 31, 1951.

EXHIBIT D

District Court of Lanai, County of Maui
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn, says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of

them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 16th day of July, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

EXHIBIT E

District Court of Lanai, County of Maui
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn, says:

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror, tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: as-

saulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

[Endorsed]: Filed Dec. 1, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF HARRIET BOUSLOG IN
SUPPORT OF ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING OR-
DER

Territory of Hawaii,
City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, on oath, deposes and says: that I am one of the attorneys for the plaintiffs herein; that affiant has been advised by David W. Tallant, Deputy Clerk of the

Circuit Court of the Second Circuit, Territory of Hawaii, Wailuku, Maui, that the Grand Jury of the Second Circuit Court will meet on Tuesday, the 2nd day of December, 1947 at 9 a.m. at the Court House, Wailuku, Maui, Territory of Hawaii.

That affiant further says that the Supreme Court of the Territory of Hawaii on November 26, 1947, handed down a decision in the case of Territory of Hawaii v. Joseph Kaholokula, et al., being No. 2657 among the records of said court, wherein said court ruled that the unlawful assembly and riot law of the Territory of Hawaii being Chapter 277 Revised Laws of Hawaii 1945, Sections 11570 to 11584 both inclusive, are constitutional and do not violate or abridge rights guaranteed by the First Amendment and the Sixth Amendment to the Constitution of the United States.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 1st day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public,
First Judicial Circuit.

My Commission expires July 31, 1951.

[Endorsed]: Filed Dec. 1, 1947.

[Title of District Court and Cause.]

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner & Sawyer and Herbert Resner, plaintiffs' attorneys, whose address is: 206 Terminal Building.

An answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Date: Dec. 1, 1947.

Note: This summons is issued pursuant to Rule 4 of the Federal Rules Civ. Proc.

From the Minutes of the United States District
Court for the District of Hawaii
Monday, December 1, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein. This case was called for hearing on the prayer of the complaint for the issuance of temporary restraining order and order to show cause.

Following a discussion on this matter, the Court ordered a temporary restraining order issued and the order to show cause, returnable on December 10, 1947 at 10 a.m.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the reading, filing and consideration of the verified complaint herein praying for an order directed to the defendants above named, to appear before the above-entitled court on a day certain and show cause why a preliminary injunction should not be granted herein, enjoining and restraining defendants above named from enforcing the unlawful assembly and riot statutes of the Territory of Hawaii and prohibiting the submission to or consideration of the unlawful assembly and riot charges by the Territory of Hawaii against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes by the defendant Grand Jurors of the County of Maui alleged to have been selected and composed in contravention of the laws and statutes of the United States or the return of indictments by said Grand

Jury against said plaintiffs in connection with said unlawful assembly or riot charges, and further praying that pending the hearing of the said order to show cause, a temporary restraining order be issued herein, and

It appearing to the court from said complaint and the affidavit of Harriet Bouslog, filed herein, that if a temporary restraining order is not granted without notice, the said allegedly improperly constituted defendant Grand Jury will meet on December 2, 1947 at Wailuku, Maui, T. H. and will at said time and place consider the return of indictments against said plaintiffs in connection with unlawful assembly and riot charges based upon alleged activities of said plaintiffs on July 14, 1947 in Lanai City, County of Maui, T. H., thereby violating said plaintiffs alleged rights under the laws and Constitution of the United States before this court can determine on the merits the validity of the selection and composition of said Grand Jury which are alleged in the petition to be unlawful, thereby nullifying plaintiffs' alleged right to have the charges against them brought before a grand jury selected and composed in accordance with the laws and the Constitution of the United States and causing plaintiffs to suffer irreparable injury by subjecting plaintiffs to the danger of an indictment for a felony, thereby injuring the reputation and good names of said plaintiffs and bringing them into disgrace, odium and ridicule and causing them to be excluded from society, endangering their em-

ployment and their ability to support their families, and the court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that the defendants above named be and they are hereby ordered to appear before the undersigned United States District Court Judge in his Court Room, Federal Building, Honolulu, T. H. on the 10th day of December, 1947, at the hour of 10:00 a.m. to show cause if any they have, why the preliminary injunction prayed for in said complaint should not be granted.

It Is Further Ordered that pending the hearing of the order to show cause that the defendants, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined until the further order of this court from presenting or submitting the charges as aforesaid against said plaintiffs to the said Grand Jurors of the County of Maui.

Dated: December 1, 1947 at 7 p.m. at Honolulu, T. H.

[Seal] /s/ D. E. METZGER,
U. S. District Judge.

MARSHAL'S RETURN

The within Summons, Order To Show Cause and Temporary Restraining Order, was received by me on the 1st day of December, A.D. 1947, and is returned executed as follows:

On December 1st, 1947, personal service was made upon Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; and upon Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; by handing to and leaving with each of them personally a true copy of Summons, Order to Show Cause and Temporary Restraining Order. Further service was made on December 2nd, A.D. 1947 at Wailuku, Maui, upon E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui; Jean Lane, individually and as Chief of Police of the County of Maui; Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; Augustine Pombo and Claude E. Chatterton, both individually and as Jury Commissioners of the County of Maui; Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Anthony A. Tam, Charles E. Thomson, Wai Ken Tam, and Joseph H. Trask, individually

and as Grand Jurors of the County of Maui; by handing to and leaving with each of them personally a true copy of Summons, Order to Show Cause and Temporary Restraining Order. Not served as to Alfred S. Burns, Ralph O. Cornwell and Paul H. Reinhart for the reason that they were out of jurisdiction. Also not served as to Henry S. S. Fong for the reason that he could not be located.

Dated at Honolulu, T. H., this 4th day of December, A.D. 1947.

/s/ OTTO F. HEINE,
U. S. Marshall,
District of Hawaii.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT
FOR INJUNCTION

Now come plaintiffs above named and pursuant to Rule 15(a) of the Rules of Civil Procedure file this amendment to their Complaint for Injunction. Plaintiffs hereby amend Paragraph IV and Paragraph XVIII of said Complaint to read as follows:

IV.

The matter in controversy exceeds as to each plaintiff, exclusive of costs or interest, the sum of Three Thousand Dollars (\$3,000.00) and arises un-

der the Constitution and Laws of the United States; that the jurisdiction of this court is founded upon the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

XVIII.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assembly and riot statutes against plaintiffs or submitting the charges against plaintiffs to said Grand Jury and prohibiting said Grand Jury from acting in any way in connection with this case against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That as to the plaintiffs ILWU, Territorial Council of ILWU and Jack Kawano, individually and as a member of the ILWU and president of the Territorial Council of the ILWU, the value of said property rights and personal liberty to the said plaintiffs to be free to exercise the right to picket without fear of previous restraint and subsequent punishment, is in excess of the sum of Three Thousand Dollars (\$3,000.00). That the said plaintiffs have spent thousands of dollars in the organization and establishment of a trade union organization, which cannot function and exercise the said property rights and personal rights in the Territory or

in the County of Maui so long as the members of the said ILWU council and Jack Kawano are subject to indictment by an illegally constituted grand jury and subject to prosecution under statutes containing unconstitutional limitations on the right to picket because of the fear and intimidation of the members of said organizations engendered by the threat of punishment for the exercise of these rights guaranteed by the Constitution.

That the value of said property rights to each of the individual plaintiffs except Kawano and the value of the liberty of each of the said plaintiffs as hereinabove alleged is in excess of Three Thousand Dollars (\$3,000.00), in that each of the said plaintiffs will be forced, by virtue of the deprivation of these rights, to expend money and incur expenses to defend himself against charges returned by an illegally constituted grand jury under an unconstitutional statute, and each plaintiff will suffer by virtue of said charges and damages to his good name, reputation and fame. That each of the said plaintiffs is informed and believes that standing trial upon said charges will result in the loss of his employment and housing accommodations, inasmuch as the rules of said plaintiffs' employer subject him to dismissal if absent from employment for four days. That because of the economic structure of the Hawaiian Islands and because of the increasing unemployment, there is not open to said plaintiffs any other source of employment or living accommodations, all to the

damage of each of the said plaintiffs in excess of Three Thousand Dollars (\$3,000.00).

Dated: December 4, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,
GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ HERBERT RESNER,
Attorneys for Plaintiffs.

Territory of Hawaii,
City and County of Honolulu—ss.

Jack Kawano, being first duly sworn, deposes and says:

That he is one of the plaintiffs named in the within and foregoing amendment to complaint; that he has read said amendment and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on his information or belief, and as to such matters he believes it to be true.

/s/ JACK KAWANO.

Subscribed and sworn to before me this 4th day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public in and for the Territory of Hawaii.
My Commission expires July 31, 1951.

[Endorsed]: Filed Dec. 4, 1947.

[Title of District Court and Cause.]

MOTION TO DISSOLVE TEMPORARY
RESTRAINING ORDER

Come now the defendants, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, and pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and the laws of the United States (28 U.S.C. sec. 381) move this Honorable Court to dissolve the temporary restraining order issued herein on December 1, 1947, on the following grounds:

I.

The temporary restraining order is not supported by jurisdiction of this Court over the subject matter in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. The temporary restraining order was issued on a complaint which failed to allege any sum or value in controversy and hence was issued without

any jurisdiction in the Court, and was and is void.

II.

The Court has no jurisdiction to issue and continue the temporary restraining order, even under the bill as amended, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union, Territorial Council of International Longshoremen's & Warehousemen's Union, and Jack Kawano have any right to or need of a temporary restraining order, and the temporary restraining order does not show any reasons for its issuance in their behalf, only the sixteen individual plaintiffs (other than Kawano) being in any way involved in the pending criminal prosecutions.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to each of said sixteen individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the amended complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficient definite and certain to support the temporary restraining order. In so far as the complaint endeavors to

show that loss of employment and housing are involved, such allegations are not supportable on the facts, for it appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof, that attendance of said plaintiffs at the trial would not result in their loss of employment or housing.

III.

There is no sufficient showing of right to equitable relief in a federal court in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by said chapter 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof.

c. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff unions and Jack Kawano, no right to or need of a temporary restraining order is shown.

IV.

The questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as now impaneled are res judicata, for as the complaint shows on its face and as shown by Exhibit E filed herewith and made a part hereof by reference, such questions have been heard and determined by a territorial court

of competent jurisdiction. No sufficient grounds to collaterally attack the decision of said court are shown.

V.

This Court has no jurisdiction to review the rulings of said territorial court, such review being confined to and available in a court of appellate jurisdiction.

VI.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby wholly failing to support the temporary restraining order.

VII.

Whether or not Judge Cristy complied with section 9812 of the Revised Laws of Hawaii 1945 with respect to the hearing and determination of the Grand Jury challenges does not present a federal question.

VIII.

The allegation that Judge Cristy was prejudiced is not supported by the facts. The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice; the complaint fails to show that the plaintiffs ever made such a challenge; as shown by Exhibits B, C and D filed herewith and made a part hereof by reference, the

Honorable Cable A. Wirtz, the regularly appointed judge of the Circuit Court of the Second Judicial Circuit, voluntarily disqualified himself with respect to the Grand Jury challenges on the ground that he was a jury commissioner, and said disqualification having necessitated the selection of another judge, the Honorable Albert M. Cristy was the choice of the plaintiffs for designation as the judge to preside in such matter, and was so designated.

IX.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

X.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as now empaneled is attacked by the complaint for failure to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, such allegations do not present a federal question.

XI.

The complaint fails to state a substantial federal question as to the validity of chapter 277 of the Revised Laws of Hawaii 1945, in that:

1. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii v. Joseph Kaholokula, et al., No. 2657", a copy of which is herewith filed as Exhibit F and by reference made a part hereof, the portion of said chapter 277 of the Revised Laws of Hawaii 1945 involved in this proceeding does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

2. Said complaint fails to allege that at the time of the occurrences referred to in Exhibits D and E of the complaint, for which occurrences the individual plaintiffs (other than Kawano) allege they fear criminal prosecution, plaintiffs were engaged in peaceful picketing or peaceable assembly, but on the contrary the complaint merely alleges that at unspecified times between July 10, 1947 and July 15, 1947 they were engaged in "certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing".

3. Said complaint shows on its face that defendants do not propose to prosecute the individual plaintiffs (other than Kawano) for peaceful picketing or peaceable assembly, and as to the remaining plaintiffs the complaint fails to show that any criminal or other proceedings against them are threatened.

4. The complaint fails to show that freedom of the press is in any way involved.

XII.

In preparing and presenting evidence to the Grand Jury of the Second Judicial Circuit, Territory of Hawaii, the defendants, Walter D. Ackerman, Jr., E. R. Bevins and Wendell F. Crockett are acting as prosecuting officers of the Territory of Hawaii and not as individuals; an action against them seeking to restrain the presentation of such evidence is an action against the Territory of Hawaii, which was not consented to be sued thereon.

XIII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such.

XIV.

A judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory fo Hawaii.

XV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened

by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, and wholly fails to show a cause of action against him.

XVI.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the unions or Jack Kawano.

XVII.

The temporary restraining order does not fix a day certain when the same shall expire, but on the contrary purports to restrain said defendants "pending the hearing of the order to show cause", which period might exceed the maximum period of ten days specified by Rule 65 of the Federal Rules of Civil Procedure and the laws of the United States (28 U.S.C. sec. 38).

Wherefore, defendants pray that said temporary restraining order be dissolved forthwith.

Dated at Honolulu, T. H., this 8th day of December, 1947.

WALTER D. ACKERMAN, JR.,

Individually and as Attorney General of the Territory of Hawaii, et al.

[Endorsed]: Filed Dec. 8, 1947.

[Title of District Court and Cause.]

NOTICE OF MOTION SERVED

To Harriet Bouslog, Myer C. Symonds, Gladstein,
Andersen, Resner & Sawyer, & Herbert Resner,
Attorneys for the Plaintiffs,

Please take notice, that on December 10, 1947 at the hour of 10 o'clock a.m., or as soon thereafter as counsel may be heard, we shall present to the Honorable D. E. Metzger, Judge of the Above Entitled Court, in his courtroom in the Federal Building, Honolulu, T. H., a motion to dissolve the temporary restraining order issued herein on December 1, 1947. There is herewith served upon you a copy of the motion which will be presented to the Court at the time aforesaid.

Dated at Honolulu, T. H., this 8th day of December, 1947.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
RVL
Deputy County Attorney,
County of Maui,
Attorneys for Defendants.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Come now the defendants above named and for their return to the order to show cause issued herein on December 1, 1947, show:

I.

The Court has no jurisdiction to issue a preliminary injunction, even under the complaint as amended, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union, Territorial Council of International Longshoremen's & Warehousemen's Union, and Jack Kawano have any right to or need of a preliminary injunction, only the sixteen individual plaintiffs (other than Kawano) being in any way involved in the pending criminal prosecution.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to each of said sixteen individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the amended complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficiently defi-

nite and certain to justify a preliminary injunction. In so far as the complaint endeavors to show that loss of employment and housing are involved, such allegations are not supportable on the facts, for it appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof, that attendance of said plaintiffs at the trial would not result in their loss of employment or housing.

II.

The Court has no jurisdiction to issue a preliminary injunction, and there is no showing warranting equitable relief in a federal court, in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by said chapter 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof.

c. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff unions and Jack Kawano, no right to or need of a preliminary injunction is shown.

III.

The questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as now impaneled are

res judicata, for as the complaint shows on its face and as shown by Exhibit E filed herewith and made a part hereof by reference, such questions have been heard and determined by a territorial court of competent jurisdiction. No sufficient grounds to collaterally attack the decision of said court are shown.

IV.

This Court has no jurisdiction to review the rulings of said territorial court, such review being confined to and available in a court of appellate jurisdiction.

V.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby failing to afford defendants notice of the grounds upon which the preliminary injunction is sought.

VI.

Whether or not Judge Cristy complied with section 9812 of the Revised Laws of Hawaii 1945 with respect to the hearing and determination of the Grand Jury challenges does not present a federal question.

VII.

The allegation that Judge Cristy was prejudiced

is not supported by the facts. The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice; the complaint fails to show that the plaintiffs ever made such a challenge; as shown by Exhibits B, C and D filed herewith and made a part hereof by reference, the Honorable Cable A. Wirtz, the regularly appointed judge of the Circuit Court of the Second Judicial Circuit, voluntarily disqualified himself with respect to the Grand Jury challenges on the ground that he was a jury commissioner, and said disqualification having necessitated the selection of another judge, the Honorable Albert M. Cristy was the choice of the plaintiffs for designation as the judge to preside in such matter, and was so designated.

VIII.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

IX.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as now impaneled is attacked by the complaint for failure to comply with sections 9791 and

9812 of the Revised Laws of Hawaii 1945, such allegations do not present a federal question.

X.

The complaint fails to state a substantial federal question as to the validity of chapter 277 of the Revised Laws of Hawaii 1945 and the convening of a three-judge court is not warranted, in that:

1. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii v. Joseph Kaholokula, et al., No. 2657", a copy of which is herewith filed as Exhibit F and by reference made a part hereof, the portion of said chapter 277 of the Revised Laws of Hawaii 1945 involved in this proceeding does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

2. Said complaint shows on its face that defendants do not propose to prosecute the individual plaintiffs (other than Kawano) for peaceful picketing or peaceable assembly, and as to the remaining plaintiffs the complaint fails to show that any criminal or other proceedings against them are threatened.

3. The allegations of the complaint do not present a justiciable controversy concerning future enforcement of said chapter 277 of the Revised Laws of Hawaii 1945, in cases not now pending.

4. Said complaint fails to allege that at the time

of the occurrences referred to in Exhibits D and E of the complaint, for which occurrences the individual plaintiffs (other than Kawano) allege they fear criminal prosecution, plaintiffs were engaged in peaceful picketing or peaceable assembly, but on the contrary the complaint merely alleges that at unspecified times between July 10, 1947 and July 15, 1947 they were engaged in "certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing".

5. The complaint fails to show that freedom of the press is in any way involved.

XI.

In preparing and presenting evidence to the Grand Jury of the Second Judicial Circuit, Territory of Hawaii, the defendants, Walter D. Ackerman, Jr., E. R. Bevins and Wendell F. Crockett are acting as prosecuting officers of the Territory of Hawaii and not as individuals; in considering such evidence the grand jurors of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, are acting as officers of the Territory of Hawaii and not as individuals; in convening the Grand Jury into session and receiving the indictments presented by it the Honorable Cable A. Wirtz is acting as a judge of a court of record of the Territory of Hawaii and not as an individual; an action against them seeking to restrain the convening of said Grand Jury, the presentation or

consideration of such evidence, or the receiving of such indictment, is an action against the Territory of Hawaii, which has not consented to be sued thereon.

XII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such.

XIII.

A judge of a circuit court of the Territory of Hawaii and the grand jurors thereof cannot properly be made parties to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii or the grand jurors thereof.

XIV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, by the defendant Jean Lane, individually or as Chief of Police of the County of Maui, or by any of the Jury Commissioners, individually or in their official

capacity, and the complaint wholly fails to show a right to a preliminary injunction against them.

XV.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the unions or Jack Kawano.

Wherefore, defendants pray:

1. That the Court find and decide that there is no substantial federal question within the jurisdiction of the Court concerning the validity of a statute of the Territory, that the Court deny the request for a court of three judges, and that the Court deny the motion for a preliminary injunction forthwith.

2. That should this matter be heard by a court of three judges the motion for a preliminary injunction be denied by said Court.

Dated at Honolulu, T. H., this 8th day of September, 1947.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
RVL
Deputy County Attorney,
County of Maui.
Attorneys for Defendants.

[Endorsed]: Filed Dec. 8, 1947.

[Title of District Court and Cause.]

Exhibits on Motion to Dissolve Temporary Restraining Order and on Return to Order to Show Cause.

EXHIBIT A

In the United States District Court
For the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union; et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; et al.,

Defendants.

AFFIDAVIT OF C. C. CADAGAN

Territory of Hawaii,
City and County of Honolulu—ss.

C. C. Cadagan, being first duly sworn, deposes and says that he is a Vice President of Hawaiian Pineapple Company, Limited; that the following named individuals are presently in the employ of said Company on its Lanai Plantation: Diego Bar-

bosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes; that the following house rule of said Company governs the discharge of employees for absence from employment:

“Causes for Discipline or Discharge

* * *

12. Unexcused absences except in cases of emergencies or in case of sickness when notice must be given as soon as possible. During any one (1) month period any unexcused absences shall be treated as follows: The first offense may result in a warning, the second offense may result in a layoff or discharge. An employee who fails to report to work for five (5) consecutive working days without proper authorization and notification shall be dropped from the rolls”;

that it has been and will continue to be the policy of said company to grant excuses for absence deemed by said Company to be on reasonable grounds and of reasonable duration; that, in response to inquiry by the Attorney General of the Territory of Hawaii, said Company has determined that, upon their application, the absence from work of the above-named employees made necessary by indictment or prosecution for violation of the laws

of the Territory of Hawaii will be excused by the Company.

/s/ C. C. CADAGAN.

Subscribed and sworn to before me this 5th day of December, 1947.

[Seal] /s/ [Illegible.]

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission Expires June 30, 1949.

EXHIBIT B

In the United States District Court
for the District of Hawaii
Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
et al.,

Defendants.

AFFIDAVIT OF RHODA V. LEWIS
Assistant Attorney General

Territory of Hawaii,
City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the duly qualified and acting

Assistant Attorney General of the Territory of Hawaii, as such is one of the attorneys for the defendants in the above-entitled matter, and also as such has participated, on behalf of the prosecution, in the matter of the challenges to the Grand Jury made in the Circuit Court of the Second Judicial Circuit of the Territory of Hawaii.

That on August 4, 1947 or August 5, 1947 deponent attended a conference in the chambers of Associate Justice E. C. Peters of the Supreme Court of the Territory of Hawaii concerning the disqualification of Judge Cable A. Wirtz, the regularly appointed judge of said second judicial circuit, to pass on said challenges. That as appears from Exhibit C-1 herein, Judge Wirtz had suggested his disqualification on the ground that he should not sit on his own acts as Jury Commissioner. That Harriet Bouslog, attorney for the defendants in said Circuit Court, who presented said challenges to the Grand Jury, and who are plaintiffs herein, was present at said conference, and stated that her clients did not take the position that Judge Wirtz was disqualified. That Judge Wirtz nevertheless disqualified himself, filing a supplemental certificate (Exhibit C-2 herein).

That on the same day or shortly thereafter, deponent discussed with Mrs. Bouslog the matter of the designation of another judge to sit on the hearing and determination of said challenges; that Mrs. Bouslog stated that the Honorable Albert M. Cristy was the preference of her clients for designation to

sit in such matter; that deponent having no objection to the designation of said Judge Cristy, Mrs. Bouslog and deponent conveyed this information to Associate Justice E. C. Peters of the Supreme Court of the Territory of Hawaii, presiding in the absence of Chief Justice S. B. Kemp; and that said Judge Cristy was duly designated to hear and determine the challenges to the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii which had been presented by Mrs. Bouslog's clients, as shown by Exhibit D herein.

That Exhibits C and D are true and correct copies of the certificates and order above mentioned, and that Exhibit E herein is a true copy of the amended challenges to the said Grand Jury above mentioned, as further amended on the hearing thereof.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 6th day of December, 1947.

[Seal]

/s/ ELEANOR PRENDERGAST,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: September 16, 1950.

EXHIBIT C-1

In the Circuit Court of the Second Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2413

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KAI AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2412

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

CERTIFICATE OF DISQUALIFICATION AS
TO MOTIONS AND CHALLENGES DI-
RECTED AGAINST THE GRAND JURY

On July 29, 1947, prior to the retirement of the
Grand Jury of the Circuit Court, Second Circuit,

Territory of Hawaii, into session a Challenge for Cause to the grand jury panel as a whole, a Motion to Quash the grand jury panel as a whole, a Motion to Dissolve the entire grand jury list and discharge all members thereof, a Demand for Voir Dire hearings on challenges to grand jury panel and motion to quash and dissolve the grand jury panel and discharge the members thereof, a Challenge to Individual grand jurors for cause, an Affidavit of John Maile and a Memorandum on points and authorities were filed in these proceedings. A Motion to set the challenges and various motions referred to for hearing was granted and the matter was set for hearing tentatively for September 2, 1947, at 9:00 a.m.

On examination of the various motions and challenges it appears that the actions of the Jury Commission, of which by law the court is a member, have been directly challenged requiring a determination as to questions of fact and although no suggestion or motion or disqualification has been advanced by Defendants, or any of them, still the court feels that it can not sit on trial of its own actions as a Jury Commissioner.

Accordingly, by virtue of the provisions of Section 9573 of the Revised Laws of Hawaii, 1945, the court feels that it should disqualify itself as to the motions and challenges above referred to in these cases.

Therefore, this court, on its own motion, stands disqualified to hear the motions and challenges above referred to in these matters and will so inform the

Chief Justice of the Territory of Hawaii so that a substitute judge may be appointed to act on said motions and challenges.

Dated at Wailuku, Maui, Territory of Hawaii, this 31st day of July, A. D., 1947.

[Seal]

CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

Filed July 31, 1947.

EXHIBIT C-2

In the Circuit Court of the Second Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY
Criminal No. 2413

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2412

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

SUPPLEMENTAL CERTIFICATE OF DIS-
QUALIFICATION AS TO MOTIONS AND
CHALLENGES DIRECTED AGAINST
THE GRAND JURY

This certificate is supplemental to that filed herein on July 31st, 1947.

The various challenges and motions referred to therein, amongst other things, charge that the Jury Commission of the Second Circuit Court in substance deliberately, intentionally and systematically, in derogation of the rights of defendants, discriminated in selecting the Grand Jury list for the January Term of Court, 1947 against the laboring class, against races other than the Caucasian race, against the feminine sex and against residents of the Island of Lanai. The Court, in addition to being a member of the Jury Commission by statutory requirement, was in fact active in all deliberations of the Jury Commission and actively participated in the selection of the Grand Jury List above referred to. The

above referred to motions and challenges likewise request an examination of each of the jury commissioners. Counsel for defendants have orally stated to the Court that they do intend to examine the Court in connection with the activities of the Jury Commission.

The anomalous situation then arises where the Court is placed in a position of being one of the officials whose actions are challenged, a material witness to the issues involved, and likewise the Judge to hear and determine those issues. Such a situation is, in the opinion of the Court, contrary to the fundamental concepts of the American judicial process.

The Court has no bias or prejudice against the defendants or any of them. It is the Court's ruling that he cannot preside in the hearing on the motions and challenges because a judge cannot be a participant in the proceeding before him to the extent above indicated. Accordingly, the last sentence of section 9573, R. L. 1945, applies. This Court stands disqualified to hear said motions and challenges.

Dated at Honolulu, Oahu, T. H. this 5th day of August, A. D., 1947.

/s/ CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

Filed August 5, 1947.

EXHIBIT D

In the Supreme Court of the Territory of Hawaii
In the Matter of the Disqualification of the Honorable Cable A. Wirtz, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, to Hear and Determine Certain Matters Herein Set Forth, and Authorizing the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Circuit, Territory of Hawaii, to Hear and Determine Said Matters and Other Like Matters.

ORDER AND AUTHORIZATION

It appearing that the Honorable Cable A. Wirtz, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, is disqualified to hear and determine the issues presented by certain motions and challenges directed against the grand jury of said circuit which were filed in those certain proceedings in said circuit court entitled and numbered Territory of Hawaii, Plaintiff, vs. Diego Barbosa, et al., Defendants, Criminal No. 2413, and Territory of Hawaii, Plaintiff, vs. Abraham Makekau, et al., Defendants, Criminal No. 2412;

Now, therefore, by virtue of the authority vested in me by law, and particularly by the provisions of sections 9642 and 9602 of the Revised Laws of Hawaii 1945, I hereby authorize and require the Honorable A. M. Cristy, Second Judge of the Cir-

cuit Court of the First Circuit, Territory of Hawaii, to hear and determine the issues presented by the motions, challenges and related papers heretofore filed in said proceedings: to wit, challenge for cause to the grand jury panel as a whole, motion to quash grand jury panel as a whole, motion to dissolve entire grand jury list and to discharge all the members thereof; demand for voir dire hearing on challenge to grand jury panel and motions to quash and dissolve grand jury panel and discharge members thereof; challenge to individual grand jurors for cause; and affidavit of John Maile.

And I Further authorize and require the said Honorable A. M. Cristy to hear and determine any additional supplementary or amended motions or challenges which may hereafter be filed, as well as any other matters relating to such motions or challenges, in any proceeding above designated or otherwise, directed against the grand jury list heretofore selected for the January term of court 1947 of said circuit.

Witness my hand in the absence of the Chief Justice of the Supreme Court of the Territory of Hawaii and the seal of the Supreme Court of the Territory of Hawaii at Honolulu, T. H., this 7th day of August, 1947.

E. C. PETERS,

Associate Justice, Supreme
Court, Territory of Hawaii.

Filed August 7, 1947.

EXHIBIT E

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

I.

FIRST AMENDED CHALLENGE FOR CAUSE
TO THE GRAND JURY PANEL AS A
WHOLE AND TO THE GRAND JURY AR-
RAY IN THE ABOVE-ENTITLED CAUSE

Exhibit E—(Continued)

II.

FIRST AMENDED MOTION TO QUASH
GRAND JURY PANEL AS A WHOLE,
AND GRAND JURY ARRAY IN THE
ABOVE-ENTITLED CAUSE

III.

FIRST AMENDED MOTION TO DISSOLVE
ENTIRE GRAND JURY LIST AND TO
DISCHARGE ALL THE MEMBERS
THEREOF AND TO DISSOLVE GRAND
JURY ARRAY IN THE ABOVE-
ENTITLED CAUSE AND TO DISCHARGE
AND DISMISS ALL THE MEMBERS
THEREOF

Come now the defendants above named, personally, and by their counsel, Harriet Bouslog and Herbert Resner, and, having been held to answer a charge for a criminal offense, to wit, riot and unlawful assembly, before the above-entitled court and the grand jury thereof and an array of said grand jury, do herewith make the following challenge and motions in connection with the within charges and cause:

I.

Defendants, and each of them, challenge for cause the grand jury panel as a whole, and the particular array before whom it is expected that the cases of these defendants will be submitted.

Exhibit E—(Continued)

II.

Defendants, and each of them, move the above-entitled court to quash the said grand jury panel as a whole, and the particular array before whom it is expected that the cases of these defendants will be submitted.

III.

Defendants, and each of them, move the above-entitled court to dissolve the said grand jury list as a whole and discharge from service on said grand jury each and every member thereof, and dissolve the particular array of said grand jury before whom it is expected that the cases of these defendants will be submitted, and to dismiss and discharge from grand jury service each and every one of said grand jurors.

Defendants, and each of them, state and rely upon the following grounds, and each of them, in support of the foregoing challenge and motions, and state and allege that if said grand jury and grand jury array are permitted to consider, deliberate upon, return indictments, or take any action whatsoever with regard to or against defendants, or any of them, in the instant or any case, their rights will be violated as follows:

1) Said grand jury and grand jury array considering the instant cases have been chosen, selected, formed and returned by the grand jury commission of the above-entitled court and said court, and its officers, agents and representatives, in a manner

Exhibit E—(Continued)

contrary to and in violation of the 14th Amendment to the Constitution of the United States.

That if said grand jury and grand jury array is permitted to or does consider the charges against defendants, or any of them, or return indictment against them, or any of them, defendants, and each of them, will be deprived of and denied their rights under said 14th Amendment, to wit, they will be deprived of and denied due process of law, the equal protection of the laws, and their privileges and immunities as citizens of the United States, or as persons entitled to the protection of the laws of the United States, will be abridged.

In support of this ground of challenge defendants, and each of them, allege and assert that said grand jury and grand jury array is composed almost in its entirety of members of the employer class, and their representatives, agents and servants. That in the selection, formation, composition and return of said grand jury and grand jury array the said jury commission and court, and its officers, agents and representatives, have systematically, deliberately and intentionally selected and chosen members of said employer class and their representatives, agents and servants to serve thereon, and systematically, deliberately and intentionally excluded therefrom and denied membership thereon to members of the working or employee class, and members of trade unions.

Defendants, and each of them, further allege and assert that because of the reasons aforesaid said

Exhibit E—(Continued)

grand jury and grand jury array does not truly, fairly nor honestly represent a fair and impartial cross section of the community over which the above-entitled court and grand jury and grand jury array possess jurisdiction. That said grand jury and grand jury array are partial, partisan and biased in their composition and membership, all of which is contrary to and violative of the accepted American tradition of a fair, impartial and unbiased grand jury and grand jury array.

Defendants, and each of them, further allege and assert because of the reasons aforesaid, that if said grand jury and grand jury array is permitted to consider, deliberate upon, and return indictments against defendants, or any of them, or otherwise consider the instant charges, defendants, and each of them, will be denied a fair, impartial and representative grand jury and grand jury array and thereby the lives, liberty and property of said defendants, and each of them, will be placed in jeopardy and they will be threatend with the deprivation of their said lives, liberty and property without due process of law.

That they will be deprived of and denied the equal protection of the laws in that defendants, and each of them, are entitled to a jury of their peers, and the composition and membership of the instant grand jury is not one of their peers.

That the privileges and immunities of defendants, and each of them, as citizens of the United States,

Exhibit E—(Continued)

or as persons entitled to the protection of the laws of the United States, will be abridged in that they will be denied a fair, impartial and representative grand jury and grand jury array.

2) Said grand jury and grand jury array considering the instant charges have been chosen, selected, formed and returned by the jury commission of the above-entitled court and said court, its officers, agents and representatives, in violation of, and contrary to the 5th and 6th Amendments to the Constitution of the United States, and particularly the grand jury and grand jury array have been so formed, constituted, selected and returned contrary to and in violation of the due process of law clause of the 5th Amendment, and are not an impartial grand jury and grand jury array as required by the said 5th and 6th Amendments.

Defendants, and each of them, by this reference, reallege and incorporate in this ground of objection and challenge to said grand jury as a whole and the grand jury array herein the same reasons and grounds set forth in paragraph I hereinabove, with the same force and effect as though said grounds were set forth in full hereinafter.

Defendants particularly assert and allege that said grand jury and grand jury array do not represent a true, proper, unbiased, impartial and representative cross section of the community wherein the above-entitled court and grand jury have juris-

Exhibit E—(Continued)

diction in that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have systematically, deliberately and intentionally selected members of the employer class and their representatives, agents and servants to serve upon said grand jury and grand jury array, and have deliberately, systematically and intentionally excluded therefrom members of the working or employee class, and trade unionists.

That defendants thereby have been denied and deprived of a fair and impartial grand jury and grand jury array, all contrary to and in violation of the said 5th and 6th Amendments.

3) Defendants, and each of them, challenge and object to said grand jury, and the whole thereof, and said grand jury array, and assert and allege that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have selected, formed, chosen and returned said grand jury and grand jury array in violation of and contrary to the provisions of the 19th Amendment to the Constitution of the United States, which provides that the rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Defendants, and each of them, allege and assert that the said jury commission and court, its officers, agents and representatives, have systematically, deliberately and intentionally excluded members of the female sex from the membership and composi-

Exhibit E—(Continued)

tion of said grand jury and grand jury array and that there are no female members thereof.

That there are a large number of females, otherwise fully qualified, in the community over which the above-entitled court and grand jury and grand jury array possess jurisdiction and the failure and refusal of the said jury commission and court, its officers, agents and representatives, to include females and a representative number thereof upon the said grand jury is violative of the said 19th Amendment, and further is violative of the 5th, 6th and 14th Amendments of the Constitution of the United States.

That the deliberate and intentional elimination of females from said grand jury and grand jury array, as aforesaid, has rendered said grand jury and grand jury array not truly or fairly representative of the community wherein said court and jury have jurisdiction, and said grand jury and grand jury array thereby is not a true, proper, fair or representative cross section thereof.

That defendants thereby have been denied and deprived of a fair and impartial grand jury and grand jury array and defendants' rights under all of said Amendments to the Constitution of the United States thereby have been denied, abridged and violated.

4) Defendants, and each of them, allege and assert that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have selected, composed, formed and re-

Exhibit E—(Continued)

turned said grand jury and grand jury array contrary to and in violation of the 5th, 6th and 14th Amendments of the Constitution of the United States in the following respects:

That said jury commission and court, its officers, agents and representatives, have deliberately, systematically and intentionally included in the membership of said grand jury and grand jury array by deliberate selection and inclusion therein a far larger proportion of persons of the Caucasian race than of non-Caucasian races resident within the jurisdiction of the above-entitled court and grand jury and grand jury array when regard is had to the population composition of said area, the fact being that the overwhelming majority of the population of said area is of races and nativity other than Caucasian.

That said jury commission and court, its officers, agents and representatives, have deliberately, systematically and intentionally excluded from the membership and composition of said grand jury and grand jury array members of non-Caucasian races, resident of the area wherein the above-entitled court and jury have jurisdiction when regard is had to the population composition of said areas as aforesaid.

That by deliberately so selecting an undue and improper proportion of members of the Caucasian race as members of said grand jury and grand jury array, and deliberately excluding therefrom a fair

Exhibit E—(Continued)

and proper proportion of non-Caucasian races from said grand jury and grand jury array, as aforesaid, said jury commission and court, its officers, agents and representatives, have deprived and denied the defendants, and each of them, of a fair, impartial and unbiased grand jury and grand jury array, and rendered said grand jury not truly, properly or fairly representative of the community wherein said grand jury and court have jurisdiction, all violative and in deprivation of the rights of defendants, and each of them, under the aforesaid 5th, 6th and 14th Amendments to the Constitution of the United States.

5) Defendants, and each of them, allege and assert that the jury commission of the above-entitled court and the said court, its officers, agents and representatives, have composed, formed, selected and returned the said grand jury and grand jury array in this case contrary to and in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States in that said jury commission and court, its officers, agents and representatives, have deliberately and systematically chosen, formed, selected and returned said grand jury and said grand jury array in this case from amongst the residents of a particular geographical area over which the above-entitled court and jury possess jurisdiction and have systematically and deliberately excluded from said grand jury and said grand jury array in this case residents of other geographical locations within the said area.

Exhibit E—(Continued)

That the grand jury array in this case is composed of 19 residents of the Island of Maui and 2 residents of the Island of Molokai. That there are no residents of the Island of Lanai upon the grand jury array in this case. That the aforesaid Islands constitute the geographical area over which the above-entitled grand jury and grand jury array and court possess jurisdiction.

That said jury commission and court, its officers, agents and representatives, have systematically and deliberately formed, selected, and returned said grand jury and grand jury array in this case by placing thereon an overwhelming number of residents of the Island of Maui and have deliberately excluded residents of the Islands of Molokai and Lanai. That thereby said jury commission and court, its officers, agents and representatives, have deliberately excluded from said grand jury and said grand jury array in this case residents of geographical areas who are otherwise qualified to serve upon said grand jury and grand jury array in this case.

That thereby said grand jury and grand jury array in this case do not represent and are not a fair, true, impartial and representative cross section of the community over which said grand jury and court possess jurisdiction, and thereby defendants, and each of them, have been denied a fair, impartial and unbiased grand jury and grand jury array in violation of their rights under the afore-

Exhibit E—(Continued)

said 5th, 6th and 14th Amendments to the Constitution of the United States.

6) Defendants, and each of them, object to the consideration of their cases by and challenge said grand jury and the grand jury array in this case upon the further ground that Section 9791 (4) of the Revised Laws of Hawaii, 1945, which describes the qualifications of jurors to include the requirement that grand jurors must “understandably speak, read and write the English language” is contrary to and in violation of the 5th and 14th Amendments to the Constitution of the United States.

Said term “understandably” is not a phrase which is intelligible or understandable on its face, but is indefinite, vague and general and thereby its application and definition are left to the discretion, and subject to the abuse thereof, of the said jury commission.

That said statute creates no standard of conduct, meaning or common sense understanding for the application of said term and since said term forms a basis for the selection of grand jurors who are to sit upon the consideration and return of indictments in criminal cases and the instant case, it vests the said jury commission and court with power to, and they have in the instant case, hand-picked a jury according to their personal likes, dislikes, prejudices and predilections, and defendants, and each of them, thereof, have been denied a fair, impartial

Exhibit E—(Continued)

and unbiased jury in violation of their rights under the 5th, 6th and 14th Amendments to the Constitution of the United States.

That said requirement that a grand juror “understandably” speak, read and write the English language is particularly objectionable in the light of the geographical and historical setting in which it is employed. The native tongues of the citizenry of the area over which the above-entitled court and grand jury have jurisdiction are other than English, and thereby the requirement of a special knowledge of English, which in fact this qualification requires, can and does have the effect of disqualifying and has disqualified in the instant grand jury and the grand jury array in this case large numbers of otherwise qualified citizens, and barred them from grand jury duty.

That thereby said grand jury and the grand jury array in this case are not a true, fair, proper or impartial cross section of the said community over which they and said court exercise jurisdiction, and defendants, and each of them, have been denied a fair, impartial and unbiased grand jury and grand jury array, all in contravention of defendants’ rights under said 5th, 6th and 14th Amendments.

7) That Section 9791 (4) of the Revised Laws of Hawaii, 1945, which requires that a grand juror must “understandably speak, read and write the English language” is unconstitutional and in violation of the 5th, 6th and 14th Amendments to the

Exhibit E—(Continued)

Constitution of the United States in that said statute purports to set up a qualification for grand jury duty inconsistent with and contrary to said constitutional amendments.

That this requirement is in conflict with the right of United States citizenship. That such a qualification has the effect of and has denied membership on the instant grand jury and grand jury array in this case to otherwise qualified citizens and thereby is a grand jury and grand jury array composed of a particular class or group of citizens, namely, those of more formal education; and those of less formal education have been systematically and deliberately excluded.

That said grand jury and grand jury array do not represent a true, fair, impartial or representative cross section of the community in the area over which said court and grand jury possess jurisdiction and defendants, and each of them, thereby have been deprived of and denied a fair, impartial and unbiased grand jury and grand jury array, all in violation of the aforesaid 5th, 6th and 14th Amendments to the Constitution of the United States.

8) That Section 9791(3) of the Revised Laws of Hawaii, 1945, which requires that a grand juror must be "intelligent and of good character" is violative of the 5th, 6th and 14th Amendments to the Constitution of the United States.

That the inclusion of said qualifications for grand

Exhibit E—(Continued)

jury membership in said statute has the effect of and has denied membership on the instant grand jury and grand jury array to otherwise qualified citizens. That said qualifications for grand jury membership have enabled said jury commission and said court, its officers, agents and representatives, to exclude and they have deliberately and systematically excluded from membership on said grand jury and grand jury array otherwise qualified citizens in that said qualifications for membership have enabled said grand jury and court to, and they have excluded from membership on said grand jury and grand jury array, citizens who are not acceptable to said jury commission and court for insufficient, invalid and improper reasons.

That said qualifications for membership on said grand jury have enabled said jury commission and said court, its officers, agents and representatives, to exclude and they have systematically and deliberately excluded from membership thereon otherwise qualified citizens who have been excluded and barred from grand jury duty because of the likes, dislikes, prejudices and predilections of said jury commission and court, its officers, agents and representatives.

That said grand jury and grand jury array thereby does not represent a true, fair, proper, or impartial cross section of the community over which said court and jury commission possess jurisdiction and defendants, and each of them, thereby have been

Exhibit E—(Continued)

denied an impartial and unbiased grand jury and grand jury array in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States.

IV.

Defendants, and each of them, allege and assert that the said jury commission has selected, composed, chosen and returned the said grand jury and grand jury array in violation of Section 9791(5) of the Revised Laws of Hawaii, 1945, in the following respect: Said section requires that grand jurors shall be summoned, returned and sworn without reference to race or place of nativity. Defendants, and each of them, allege that said court and jury commission have selected, summoned and returned said grand jury and grand jury array with reference to race and place of nativity in that said jury commission has selected an overwhelming number of members of the Caucasian race as members of said grand jury and grand jury array and has eliminated and excluded therefrom a fair and representative number of persons of non-Caucasian races, when regard is had to the population composition of the geographical area over which the said court and grand jury possess jurisdiction. That thereby the said jury commission has selected, summoned and returned said grand jury and grand jury array in violation of the aforesaid statute of the Territory of Hawaii and defendants, and each of them, have been thereby denied a fair, impartial and unbiased grand jury and grand jury array.

Exhibit E—(Continued)

This challenge and these motions are based upon all of the grounds aforesaid and are supported by the affidavits of John Maile and upon the memorandum of points and authorities filed and served with the original challenge and motions herein, upon all the files, records, papers and proceedings in the within court in connection with this matter, and upon argument of counsel.

Wherefore, defendants, and each of them, pray that their aforesaid challenge for cause to the grand jury panel as a whole and to the grand jury array in the above-entitled cause be allowed, and that their motions to quash the grand jury panel as a whole and the grand jury array in the above-entitled cause, and to dissolve the entire grand jury list and to discharge all the members thereof and to dissolve the grand jury array in the above-entitled cause and to discharge and dismiss all the members thereof be granted.

Dated: Honolulu, T. H., this 12th day of September, 1947.

HARRIET BOUSLOG,
HERBERT RESNER,
Attorneys for Defendants.

Filed September 12, 1947.

Exhibit E—(Continued)

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY
TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY
TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

FIRST AMENDED CHALLENGE TO INDIVI-
DUAL GRAND JURORS FOR CAUSE

Come now the defendants herein by their counsel,
Harriet Bouslog and Herbert Resner, and challenge
for cause the following grand jurors named herein:

Kenneth Auld of Hooluhua, Molokai.

Exhibit E—(Continued)

Edward H. Baldwin of Honuaula, Maui.

Richard H. Baldwin of Makawao, Maui.

Edward S. Bowmer of Mala, Lahaina, Maui.

Robert P. Bruce of Paia, Maui.

Alfred S. Burns of Honolua, Maui.

Jack Costa of Puunene, Maui.

Stanley Elmore of Maui.

Allan H. Ezell of Maui.

Henry Fong of Keokea, Maui.

Charles Goodness of Keokea, Maui.

Walter W. Holt of Haiku, Maui.

Irving Maeda of Wailuku, Maui.

H. S. Peterson of Kahului, Maui.

John Plunkett of Keanae, Maui.

Joseph H. Trask of Wailuku, Maui.

Defendants, and each of them, challenge each of the aforesaid grand jurors for the reason that they, and each of them, are biased and prejudiced against defendants; that said grand jurors are members of the employer class or their representatives; that said grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out of which the instant cases arose; that defendants, and each of them, cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors.

Defendants, and each of them, challenge the remaining members of the entire grand jury panel

Exhibit E—(Continued)

as well as the members of the grand jury array named herein, said challenge to the balance of the panel being upon the same grounds as the challenge to the individual grand jurors named herein.

Defendants, and each of them, demand that they be permitted to examine each and every one of the grand jurors of the particular array in this case and also the remaining members of the entire grand jury panel on voir dire hearing in connection with the challenge and in support of same.

Wherefore, defendants, and each of them, pray that this challenge for cause to each of the aforesaid grand jurors be allowed and that said grand jurors be excluded from a consideration of the instant charges.

HARRIET BOUSLOG,
HERBERT RESNER,
Attorneys for Defendants.

Exhibit E—(Continued)

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

Cr. No. 2413

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, et al,

Cr. No. 2412

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al.

AMENDMENT TO DEFENDANTS' CHAL-
LENGES AND MOTIONS IN RE GRAND
JURY PANEL AND ARRAY

Come now all of the defendants herein, amend their challenges and motions on file herein, and allege as follows:

That they, and each of them are members of the working class and are farm laborers or day laborers; that they are members of a trade union, namely, the International Longshoremen's and Warehousemen's Union; that said union and these defendants were on strike against the pineapple industry of Hawaii including the industry on the Islands of Maui, Lanai and Molokai from July 10 to July 15, 1947; that the instant charges grow out of said

Exhibit E—(Continued)

pineapple strike; that defendants were arrested in connection with labor activities in conjunction with said strike;

That defendants other than Antonio Mendes are all members of races other than the Caucasian race, namely, that Diego Barbosa is Filipino; Harry Kapena Kaopuiki is Hawaiian; Isami A. Nitta is Japanese; John Maile is Hawaiian; Victor Degamo is Filipino; Ah Sing Ah Ho is Chinese; James Kia Aikala is Hawaiian; Shigero Yagi is Japanese; Basiliso Arruiza is Filipino; Midori Oda is Japanese; Shigeyuki Matsuura is Japanese; Abraham Makekau is Hawaiian; Elpidio Siruet is Filipino; Mariano Baldua is Filipino; Narcisso Sipe is Filipino; Antonio Mendes is Caucasian, namely, Spanish-Peruvian.

That the defendants and each of them are within the class or groups of persons excluded from membership and service on the grand jury list and grand jury array under challenge in the instant case.

Dated at Maui, T. H. September 18, 1947.

HARRIET BOUSLOG,
HERBERT RESNER.

Filed Sept. 18, 1947.

EXHIBIT G

District Court of Lanai, County of Maui,
Territory of Hawaii

Circuit Court Criminal No. 2412

COMPLAINT

Andrew S. Freitas first being duly sworn says :

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled to-gether with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A. D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai
County of Maui.

District Court of Lanai County of Maui

RIOT

THE TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES.

WARRANT OF ARREST

Issued at 10:00 o'clock A. M., July 15, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Returned at 6:10 o'clock P. M., July 15, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Executed the within Warrant on the person of
Abraham Makekau, Elpidio Siruet, Mariano Bal-
dua, Narcisso Sipe, Antonio Mendes Lanai City,
Lanai, T. H.

Named therein, this 15th day of July, 1947.

/s/ J. D. SEABURY,
Police Officer.

District Court of Lanai,
Tuesday, July 15, 1947

Case No. 91

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU,
ELPIDIO SIRUET,
MARIANO BALDUA,
NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

RIOT

Mr. Frank Crockett Counsel for Prosecution

Mr. Celedonio Asuncion Sworn in as Interpreter

Mr. Crockett reads complaint to defendants:

Andrew S. Freitas, first being duly sworn says:

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, push-

ing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

The Court: To each defendant, Do you understand the charge?

A. Yes, by each defendant.

The Court: To each defendant, Do you wish to waive preliminary examination in this court?

A. Yes, by each defendant.

The Court: The defendants having waived preliminary examination in this court, they are therefore committed to the Circuit Court of the Second Judicial Circuit to await the actions of the Grand Jury.

Defendants released under Bond of \$1000, each as ordered by Judge Cable Wirtz through Police radio.

/s/ JOSEPHINE K. MEDEIROS,
District Court Clerk.

/s/ YOUNG WA,
District Magistrate,
Acting Magistrate,
District Court of Lanai.

In the District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 91

RIOT

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii, County of Maui, ss.

I Young Wa, Acting District Magistrate of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to-wit: Copy of Complaint and copy of my record showing the charges and proceedings had against the above named defendants, are full, true and faithful, and all of which, are herewith sent up to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, this 15th day of July, A. D. 1947.

/s/ YOUNG WA,

Acting, District Magistrate,
County of Maui.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the

office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated at Wailuku, Maui, T. H., Dec. 8th, A. D. 1947.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

EXHIBIT H

District Court of Lanai, County of Maui,
Territory of Hawaii

Circuit Court Criminal No. 2413

COMPLAINT

Andrew S. Freitas First being duly sworn says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James 'Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez,

Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 16th day of July, A. D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

District Court of Lanai, County of Maui
RIOT

THE TERRITORY OF HAWAII

vs.

DIEGO BARBOSA and 10 others

WARRANT OF ARREST

Issued at 10:00 o'clock A. M., July 16, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Returned at 2:00 o'clock P. M., July 16, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

District Court of Lanai
Wednesday, July 16, 1947

Case No. 92

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT

Mr. Andrew S. Freitas Counsel for Prosecution

Mr. Celedonio Asuncion Sworn in as Interpreter

Mr. Freitas reads complaint to defendants:

Andrew S. Freitas, first being duly sworn says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously

join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liverty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

The Court: To each defendant, Do you understand the charge?

A: Yes, by each defendant.

The Court: To each defendant, Do you wish to waive preliminary examination in this court?

A: Yes, by each defendant.

The Court: The defendants having waived preliminary examination in this court, they are therefore committed to the Circuit Court of the Second Judicial Circuit to await the actions of the Grand Jury.

Bond as authorized by Judge Wirtz for each defendant are set as follows:

Diego Barbosa	\$1000.00
John Maile	1000.00

Victor Degamo	500.00
Harry K. Kaopuiki	250.00
Isami A. Nitta	250.00
Ah Sing Ah Ho	250.00
James Kia Aikala	500.00
Shigeru Yagi	250.00
Basiliso Arruiza	500.00
Midori Oda	250.00
Shigeyuki Matsuura	250.00

\$5000.00

/s/ JOSEPHINE K. MEDEIROS,
District Court Clerk.

/s/ YOUNG WA,
District Magistrate,
Acting Magistrate,
District Court of Lanai.

In the District Court of Lanai, County of Maui,
Territory of Hawaii
Case No. 92

RIOT

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTI, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii, County of Maui, ss.

I Young Wa, Acting District Magistrate of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to-wit: Copy of Complaint and copy of my record showing the charges and proceedings had against the above named defendants, are full, true and faithful, and all of which, are herewith sent up to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, this 16th day of July, A. D. 1947.

/s/ YOUNG WA,

Acting, District Magistrate,
County of Maui.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Dec. 8th, A. D. 1947.

/s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

From the Minutes of the United States District
Court for the District of Hawaii

Wednesday, December 10, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Deputy Attorney General of the Territory of Hawaii, and Mr. W. F. Crockett, Deputy County Attorney for the County of Maui, counsel for the defendants herein. This case was called for hearing on motion to dissolve the temporary restraining order and on the return to the order to show cause.

At 10 a.m., opening argument was had by Miss Lewis, followed at 11:21 a.m., by Mr. Crockett.

At 12:06 p.m., the Court ordered that this case be continued to 1:30 p.m., this day.

At 1:35 p.m., argument was had by Mrs. Bouslog.

At 3:45 p.m., closing argument was had by Mr. Crockett, followed at 3:50 p.m., by Miss Lewis.

At 4:10 p.m., argument was had by Mr. Symonds.

At 4:20 p.m., following said argument, the Court denied the motion to dissolve the temporary restraining order and ordered an amended temporary restraining order issued as of this date.

The Court then found that this matter properly constituted a cause to be heard by a three-Judge court.

In the United States District Court for the
District of Hawaii

Civil No. 828

ORDER ON MOTION TO DISSOLVE TEM-
PORARY RESTRAINING ORDER AND
AMENDED TEMPORARY RESTRAINING
ORDER

The order issued on December 1, 1947 directed to the defendants to show cause why a preliminary injunction should not be entered herein and the return of the defendants to said order to show cause, and the motion of defendants to dissolve the temporary restraining order herein, having come on regularly for hearing before the undersigned District Court Judge at his courtroom, Federal Building, Honolulu, T. H., on December 10, 1947 at the hour of 10 A. M., and the plaintiffs appearing by Harriet Bouslog, Myer C. Symonds and Gladstein, Andersen, Resner and Sawyer by Harriet Bouslog

and Myer C. Symonds, their attorneys, and the defendants appearing by Rhoda V. Lewis and Wendell F. Crockett, their attorneys and the matter having been orally argued and submitted to the court for decision, and

It appearing to the court that the plaintiffs seek a preliminary injunction prohibiting the enforcement by defendants of the unlawful assembly and riot statute of the Territory of Hawaii, and prohibiting the submission to or consideration of the pending unlawful assembly and riot charges against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes, by or return of indictments by the defendant Grand Jurors of the County of Maui against said plaintiffs in connection with said charges, and

It further appearing to the court that the complaint herein presents a substantial claim of invalidity of said unlawful assembly and riot statute, and

It further appearing to the court from Title 28 USC Section 380 (Judicial Code 266, Amended) that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of said Section 266 of the Judicial Code, and that this is a proper case for the convening of a three-judge court pursuant to such statute, and

It further appearing to the court that pending

the convening and hearing of said application for a preliminary injunction by a three-judge court the defendant Grand Jurors of the County of Maui will meet and consider the return of an indictment against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes in connection with unlawful assembly and riot charges based upon alleged activities of said plaintiffs on July 14, 1947 in Lanai City, Lanai, County of Maui, Territory of Hawaii and thereby a change in the status quo will be effected before a three-judge court can be convened, and the plaintiffs will be subjected to the danger of an indictment for a felony under the said alleged unlawful assembly and riot statute by the said defendant Grand Jurors of the County of Maui, and the court being fully advised in the premises and it being a proper case for this order,

Is Is Hereby Ordered that the motion of the defendants to dissolve the restraining order issued herein on December 1, 1947 be and the same is hereby granted on the ground that said temporary restraining order was issued without jurisdiction, in that the original complaint failed to allege the amount in controversy, and the complaint having been amended prior to the hearing herein,

It Is Further Ordered that pending the convening, hearing, and determination of the mo-

tion for a preliminary injunction as prayed for in the complaint by a three-judge court, that the defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui, Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined from presenting or submitting the charges as aforesaid against said plaintiffs to any Grand Jurors of the County of Maui.

Dated at Honolulu, T. H., this 10th day of December, 1947, at 5:30 P. M.

/s/ D. E. METZGER,
Judge.

[Endorsed]: Filed Dec. 23, 1947.

From the Minutes of the United States District
Court for the District of Hawaii

Saturday, December 20, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Mr. Michiro Watanabe and Miss

Rhoda V. Lewis, Deputy Attorneys General, Territory of Hawaii, counsel for the defendants herein. This case was called for conference re settlement of the form and substance of the amended Restraining Order.

The Court allowed the defendants herein until January 6, 1948 within which to answer.

[Title of District Court and Cause.]

STIPULATION AND ORDER JOINING
ADDITIONAL PLAINTIFFS

It is hereby stipulated by and between the parties to the above-entitled action:

1. That Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Polipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco, Daniel Kaopuiki, are the defendants named in that certain criminal complaint number 101 filed in the District Court of Lanai, County of

Maui, Territory of Hawaii, a copy of which is attached hereto and marked Exhibit "F".

2. That said criminal complaint (Exhibit "F") arose out of the same incident, occasion, occurrence or series of occurrences, at the same time and place, as that involved in the complaint against Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basilio Arruiza, Midori Ota and Shigeyuki Matsuura, being the complaint attached to the verified complaint herein as Exhibit "D" thereof.

3. That said individuals named in paragraph 1 of this stipulation were on September 16, 1947 committed by the Acting Magistrate, Lanai District Court, to await the action of the Grand Jury of the Second Judicial Circuit, a copy of the decision so committing them being hereto attached as Exhibit "G".

4. That said Grand Jury at the date of filing of the complaint herein (December 1, 1947) was composed of the same Grand Jurors as are named as defendants in the above entitled action.

5. That the individuals named in paragraph 1 of this stipulation may be and hereby are joined as additional plaintiffs in the above entitled action, and that the complaint herein shall be and hereby is amended:

a. By amending the title of the action so as to add thereto the names of said additional plaintiffs.

b. By adding to the complaint herein, as paragraphs XIX to XXII inclusive, paragraphs 1 to 4 of this stipulation.

6. That all proceedings and orders heretofore made herein shall be binding upon and applicable to the additional plaintiffs.

Dated: Honolulu, T. H., December 31st, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,
GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

/s/ HERBERT RESNER,

Attorneys for Plaintiffs and
Additional Plaintiffs.

/s/ RHODA V. LEWIS,

Assistant Attorney General
Attorney for Defendants.

It is so ordered December 31, 1947.

/s/ D. E. METZGER,

U. S. District Judge.

[Endorsed]: Filed Dec. 31, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF HARRIET BOUSLOG

Territory of Hawaii,

City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn deposes and says; that she is one of the attorneys for the plaintiffs herein; that on December 31, 1947 a Stipu-

lation and Order Joining Additional Plaintiffs was filed herein; that affiant is informed and believes and therefore states that the citizenship and race of each of said additional plaintiffs is as follows:

Guillermo Alboro Jr., U.S. citizen, (Malayan-Filipino).

Domingo Basinga, Philippine citizen, (Malayan-Filipino).

Jose Carranza, Philippine citizen, (Malayan-Filipino).

Daniel Casil, Philippine citizen, (Malayan-Filipino).

Honorio Collado, Philippine citizen, (Malayan-Filipino).

Mariano Dugay, Philippine citizen, (Malayan-Filipino).

Saturnino Gaspar, Philippine citizen, (Malayan-Filipino).

Victor Guillermo, Philippine citizen, (Malayan-Filipino).

Simon Hermano, Philippine citizen, (Malayan-Filipino).

Pablo Pineda, Philippine citizen, (Malayan-Filipino).

Norberto Quiton, Philippine citizen, (Malayan-Filipino).

Melicio Reutorio, Philippine citizen, (Malayan-Filipino).

Alipio Sajor, Philippine citizen, (Malayan-Filipino).

Jose Sotelo, Philippine citizen, (Malayan-Filipino).

Ignacio Sumagit, Philippine citizen, (Malayan-Filipino).

Sotero Unciano, Philippine citizen, (Malayan-Filipino).

Andres Velasco, Philippine citizen, (Malayan-Filipino).

Daniel Kaopuiki, U. S. citizen, (Polynesian-Hawaiian).

Lono Pokipala, U. S. citizen, (Polynesian-Hawaiian).

George Ramaila, U. S. citizen, (Malayan-Filipino).

Eusticio Hubin, U. S. citizen, (Malayan-Filipino).

Jack Narciso Sipe, U. S. citizen, (Malayan-Filipino).

Kazuichi Hashimoto, U. S. citizen, (Mongolian-Japanese).

Rocky Honda, U. S. citizen, (Mongolian-Japanese).

Kenneth Matsumoto, U. S. citizen, (Mongolian-Japanese).

Hiroshi Oshiro, U. S. citizen, (Mongolian-Japanese).

Mitsuyuki Oyama, U. S. citizen, (Mongolian-Japanese).

Itsuo Shimizu, U. S. citizen, (Mongolian-Japanese).

Ryoji Shimizu, U. S. citizen, (Mongolian-Japanese).

Nobuteru Tomita, U. S. citizen, (Mongolian-Japanese).

Sam Shin, U. S. citizen, (Mongolian-Polynesian-Korean-Hawaiian).

Abraham Makekau, U. S. citizen, (Mongolian-Polynesian-Chinese-Hawaiian).

Vicente Saloricman, U. S. citizen, (Malayan-Filipino).

Yoshio Ginoza, U. S. citizen, (Mongolian-Japanese).

Masao Gima, U. S. citizen, (Mongolian-Japanese).

Further affiant sayeth not.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 6th day of January, 1948.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires July 31, 1951.

[Endorsed]: Filed Jan. 7, 1948.

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATEMENT. MOTION TO DISMISS ACTION AND FOR SUMMARY JUDGMENT

Come now the defendants above named and pursuant to Rules 10(b), 12 and 56 of the Rules of Civil Procedure move this Honorable Court as follows:

I.

Defendants move the Court for an order requiring plaintiffs to make a more definite statement as to certain matters in the complaint as amended, to wit:

1. Paragraph VIII of the complaint reads as follows:

“VIII.

“That from July 10, 1947, to and including July 15, 1947, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian pineapple industry. That the individual plaintiffs, other than Kawano, and the various local unions of the ILWU having members employed in the pineapple industry were on strike against the pineapple industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitution-

ally protected activities of speech, press and assemblage and of peaceful picketing.”

The last sentence of said paragraph does not inform the defendants at what particular time or times during the period July 10, 1947 to and including July 15, 1947 they were engaged in peaceful picketing, and defendants desire the particulars thereof as to each individual plaintiff (other than Kawano), in relation to the time of occurrence of the events alleged in the criminal complaint against him, which criminal complaint is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibits D and E; paragraph 1 of the stipulation of December 31, 1947, incorporating Exhibit F).

2. Paragraph XVI of the complaint reads as follows:

“XVI.

“That the hearings referred to in Paragraph XIII, wherein plaintiffs attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived plaintiffs of, and refused to permit plaintiffs to have, a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said

hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that plaintiffs were denied a full, fair and impartial hearing in connection with said motions and challenges. That it is necessary and imperative that this Court assume jurisdiction in the matter in order that plaintiffs shall have an impartial, representative and democratic Grand Jury, and that they shall be allowed a full, fair and impartial hearing in connection with their said challenges and motions. That by his actions as herein described the said Judge Cristy deprived plaintiffs of the kind of an impartial hearing to which they are entitled under Section 9812 of the Revised Laws of Hawaii, 1945."

Said paragraph does not inform the defendants wherein the Honorable Albert M. Cristy prejudged or predetermined the motions and challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, or wherein plaintiffs were denied a full, fair and impartial hearing. Defendants desire the particulars thereof, with references to the record in the matter of said Grand Jury motions and challenges.

II.

Defendants move this Court for an order requiring plaintiffs to make a more definite statement of their several claims, so as to state in a separate count each claim founded upon a separate transaction or occurrence, to wit:

1. To state in a separate count the alleged claim

of the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes (named in Exhibit E of the complaint) for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

2. To state in a separate count the alleged claim of the remaining individual plaintiffs (named in Exhibit D of the complaint and Exhibit G added thereto by the stipulation of December 31, 1947, and not including Jack Kawano), for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

3. To state in a separate count the alleged claim of the plaintiff unions and Jack Kawano for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

4. To state in a separate count the alleged claim of the plaintiffs for relief on account of the alleged selection and composition of the Grand Jury, and to specify therein the defendants against whom such relief is claimed.

III.

Defendants move the Court to dismiss the action for lack of jurisdiction over the subject matter, because the matter in controversy does not exceed three thousand dollars exclusive of interest and costs as to each of the plaintiffs or any of them, and specifically:

1. The allegations of the complaint relating to the jurisdictional amount are not well founded in law.

2. The allegations of the complaint relating to the jurisdictional amount are not sufficient definite and certain.

3. Defendants controvert, as to each and every plaintiff, the allegations of the complaint concerning the jurisdictional amount, and hereby put said plaintiffs to their proof thereof.

4. Further, defendants show by the affidavit of C. C. Cadagan, being Defendants' Exhibit A filed on December 8, 1947 with the return to the order to show cause herein and made a part hereof by reference, that the allegations of the amended complaint that for the plaintiffs to stand trial on the charges against them would result in the loss of their employment and housing accommodations, are untrue.

IV.

Defendants move the Court to dismiss so much of the complaint as purports to allege, in favor of the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes (named in Exhibit E of the complaint), a claim for relief against the enforcement of the unlawful assembly and riot statute, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. The complaint fails to show that said plaintiffs are threatened with more than one criminal proceeding, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

6. The complaint fails to show that the Grand Jury of the Second Judicial Circuit has heard the

evidence against said plaintiffs or made any determination as to whether it will present an indictment against them under the unlawful assembly and riot statute of the Territory. As a matter of law, both plaintiffs and defendants are without knowledge or information sufficient to allege whether the Grand Jury would or would not present such indictment upon hearing the evidence.

7. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, being Defendants' Exhibit A filed on December 8, 1947 with the return to the order to show cause herein and made a part hereof by reference.

8. The complaint fails to show that the prohibitions contained in said unlawful assembly and riot statute will impose on the plaintiffs great and immediate irreparable injury with respect to their rights to improve employment conditions or any other rights.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events alleged in the criminal complaint against them, which criminal complaint is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of

Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

13. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula, et al., No. 2657", a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

14. As shown by Defendants' Exhibit G filed December 10, 1947 on the return to the order to show cause and by Defendants' Exhibit I, hereto annexed, said exhibits being made a part hereof by reference, said plaintiffs, after waiving preliminary examination, were committed to the Circuit Court of the Second Judicial Circuit to await the action of the Grand Jury, having been arrested and

arraigned on a complaint sworn to by Assistant Chief of Police Andrew S. Freitas, based on evidence tending to show as follows:

That on the morning of July 15, 1947, at the hour of five o'clock a.m. said plaintiffs, together with other persons, the total numbering in excess of twenty-five, went to the home of Jacob Kalua Nahinu and Sam Kalua, at Lanai City, Island of Lanai, County of Maui, in the Second Judicial Circuit of the Territory of Hawaii, and then and there, on their home premises, said Jacob Kalua Nahinu and Sam Kalua were assaulted and beaten by some of the persons so congregated, and that the plaintiffs were among the persons who so assaulted and beat Jacob Kalua Nahinu and Sam Kalua, and that Jacob Kalua Nahinu was injured thereby.

Such evidence ought of right to be brought before and heard by the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, and no constitutional or other right of the plaintiffs would be violated should the Grand Jury consider the unlawful assembly and riot statute in connection therewith.

15. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or proposed to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the

Territory of Hawaii, which has not consented to be sued thereon.

V.

Defendants move the Court to dismiss so much of the complaint as purports to allege in favor of the remaining individual plaintiffs (named in Exhibit D of the complaint and Exhibit G added thereto by the stipulation of December 31, 1947, and not including Jack Kawano), a claim for relief against the enforcement of the unlawful assembly and riot statute, and defendants move for summary judgment thereon, on the following grounds:

Grounds 1 to 8 inclusive are the same as are set forth in part IV hereof, and they are incorporated herein by reference.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events alleged in the criminal complaints against them, which criminal complaints are incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit D; stipulation of December 31, 1947 incorporating Exhibit F).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or

for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

13. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula, et al., No. 2657", a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

14. As shown by Defendants' Exhibit H filed December 10, 1947 on the return to the order to show cause, and by Defendants' Exhibits J and K, hereto annexed, all said exhibits being made a part hereof by reference, the plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeri Yagi, Basiliso Arruiza, Midori Oda, and Shigayuki Matsuura, after waiving preliminary examination, and the remaining plaintiffs after pre-

liminary examination, were committed to the Circuit Court of the Second Judicial Circuit to await the action of the Grand Jury, having been arrested and arraigned on complaints sworn to by Assistant Chief of Police Andrew S. Freitas. Said complaints, and in the case of the plaintiffs who did not waive preliminary examination, said commitment, were based on evidence tending to show as follows:

That on July 14, 1947 said plaintiffs, with divers other persons, the total number exceeding 125, assembled together at Kaumalapau Wharf on the Island of Lanai, County of Maui in the Second Judicial Circuit of the Territory of Hawaii. That at about 4:10 p.m. on said day a pineapple barge arrived at the said wharf and was secured at the dock, whereupon certain employees of Hawaiian Pineapple Company, Limited, began operations to load such barge with pineapples then on the dock. That employees so engaged were Anthony Fernandes, who started to operate the crane, Frederick S. Johnson, Jerome Harrington, Carl Kluge and Charles Marquez who mounted the pineapple bins, and Buck Manriki who remained on the table alongside of the pineapple bins.

That at about this time the persons assembled, who previously had been standing or sitting near the rail at the entrance to the dock began to form into two rows or lines with eight union "picket policemen" in front of them. That suddenly Diego Barbosa, one of the plaintiffs herein and one of

said "picket policemen", started to run toward the pineapple bins, at the same time yelling and motioning for the others who had lined up as aforesaid to follow him. That the men who had lined up and others who joined them rushed forward toward such pineapple bins and toward the men there employed, yelling, and that the number of men in the rush exceeded one hundred.

That many of those who so rushed forward mounted the tier of bins where Johnson and Harrington were at work, and that Johnson was pushed off this tier of bins and Harrington was severely beaten about the head and body by one or more of such persons.

That some of the persons who so rushed forward climbed onto the crane and Fernandez at the same time jumped off onto the dock and ran, closely followed by twelve to fifteen persons who caught him and began to beat and assault him. That Fernandes then jumped to the lower portion of the wharf where three of such assailants followed him and continued in an attempt to strike him. That Fernandes then being unable to otherwise escape from his assailants, fell or jumped into the waters of Kaumalapau Bay and while swimming and attempting to reach a place of safety was further attacked by his assailants by their throwing and attempting to strike him with pineapples.

That when the rush or charge of the persons assembled as aforesaid commenced and while it was going on the police present yelled and called out

loudly to the crowd to stop and return to the entrance where they had previously gathered, but were unable to stop them. That after a period of approximately four or five minutes from the time they first began such charge all of the persons who had been engaged in such charge and in the actions above set forth ceased such activities and returned back to the entrance of the dock where they had been waiting previous to such charge.

That among those present who rushed forward and did or aided or countenanced others in doing the acts and things above set forth were the plaintiffs named in Exhibit D of the complaint and in Exhibit G added thereto by the stipulation of December 31, 1947.

Such evidence ought of right to be brought before and heard by the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, and no constitutional or other rights of the plaintiffs would be violated should the Grand Jury consider the unlawful assembly and riot statute in connection therewith.

15. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the

Territory of Hawaii, which has not consented to be sued thereon.

VI.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim of the plaintiff unions and Jack Kawano for relief against the enforcement of the unlawful assembly and riot statute, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.
2. Plaintiff unions are not entitled to prosecute this suit under the Civil Rights Act of the United States.
3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.
4. The complaint fails to show that said plaintiffs, if they do not obtain equitable relief, will suffer great and immediate irreparable injury.
5. The allegations of the complaint do not present a justiciable controversy concerning future en-

forcement of the unlawful assembly and riot statute in cases not now pending.

6. The complaint fails to show that the union members whom plaintiffs seek to represent will be subjected to further prosecutions under said unlawful assembly and riot statute, other than the pending criminal proceedings.

7. The complaint fails to show that the defendant prosecuting officers of the Territory of Hawaii propose to prosecute plaintiffs' members for peaceful picketing or peaceable assemblage, or for the exercise of their constitutional rights of free speech, press, or assemblage.

8. No allegations showing that the plaintiffs' members are subject to further prosecutions under said unlawful assembly and riot statute could be made without showing intent to engage in wrongful conduct, depriving the plaintiffs of the right to equitable relief under the maxim that "he who comes into equity must come with clean hands".

9. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

10. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of

Hawaii vs. Joseph Kaholokula, et al., No. 2657'', a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

11. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

VII.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim for relief on account of the alleged selection and composition of the 1947 Grand Jury, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim upon which such relief can be granted.

2. The complaint fails to allege or show any in-

validity in the laws governing the selection and composition of the Grand Jury.

3. The Court judicially knows that pursuant to section 9638 of the Revised Laws of Hawaii 1945 a new term of court commenced in the Second Judicial Circuit of the Territory of Hawaii on the second Monday in January, 1948, to wit, January 12, 1948, and that the 1947 Grand Jury list has been dissolved by efflux of time and a new grand jury list has been prepared and returned by the jury commission. By reason of the temporary restraining order issued herein on December 10, 1947 the 1947 Grand Jury was prevented from hearing the charges against the plaintiffs and the plaintiffs thereby mooted their claim for an adjudication as to the validity of the selection and composition of said 1947 Grand Jury. Said alleged issue now is moot and not justiciable.

VIII.

Defendants named individually and as Grand Jurors of the County of Maui move the Court to dismiss the action as to them, on the following grounds:

1. The alleged claim against them is moot.
2. The complaint fails to state a claim for relief against them.
3. The grand jurors of a circuit court of the Territory of Hawaii cannot properly be made parties to a proceeding in which an injunction is sought to

restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against said grand jurors.

IX.

Defendant Cable A. Wirtz, individually and as Circuit Court Judge of the County of Maui, moves the Court to dismiss the action as to him, on the following grounds:

1. The complaint fails to state a claim for relief against him.

2. A judge of a circuit court of the Territory of Hawaii cannot properly be made party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

X.

Defendants Cable A. Wirtz, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, move the Court to dismiss the action as to them on the following grounds:

1. The alleged claim for relief on account of the alleged selection and composition of the 1947 Grand Jury is moot.

2. The complaint fails to state a claim for relief against them.

XI.

Defendant Jean Lane, individually and as Chief of Police of the County of Maui, moves the Court to dismiss the action as to him on the ground that it fails to state a claim for relief against him.

Wherefore, defendants pray:

- a. That the action be dismissed.
- b. That summary judgment be entered for the defendants.
- c. That if the action be not wholly dismissed, or if summary judgment be not entered for the defendants upon the whole case, that the action be dismissed as to certain of the defendants, and that plaintiffs be required to make certain matters in the complaint more definite, and that plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded upon a separate transaction or occurrence.

Dated at Honolulu, T. H., this 14th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

/s/ WENDELL F. CROCKETT,

By RVL.

Deputy County Attorney, County of Maui. Attorneys for Defendants.

[Title of District Court and Cause.]

To Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner and Sawyer, and Herbert Resner, Attorneys for the Plaintiffs.

Please take notice that the foregoing motions will be presented before the three-judge court convened in accordance with section 266 of the Judicial Code, as provided by order of the Honorable D. E. Metzger, judge of the above-entitled court, made December 10, 1947, immediately upon the convening of said court for the hearing of this cause at the Federal Building, Honolulu, Territory of Hawaii, or as soon thereafter as counsel can be heard.

Dated at Honolulu, T. H., this 14th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

/s/ WENDELL F. CROCKETT,

By RVL.

Deputy County Attorney, County of Maui. Attorneys for Defendants.

EXHIBIT I

AFFIDAVIT OF ANDREW S. FREITAS

Assistant Chief of Police

Re: Assault on Jacob Nahinu and Sam
Kalua

July 15th, 1947

Territory of Hawaii,
County of Maui—ss.

Andrew S. Freitas being first duly sworn on oath deposes and says that he is the Assistant Chief of Police for the County of Maui, Territory of Hawaii;

That on or about the 15th day of July, 1947, affiant was detailed to the Island of Lanai, together with other police officers from headquarters at Wailuku for the purpose of preserving the peace and preventing any disturbance among the employees of Hawaiian Pineapple Co. Ltd., who were then on strike.

That on the morning of July 15, 1947, at about the hour of 5:30 a.m. a report was received at the police station at Lanai City, Lanai, that 2 employees of the said pineapple company, to wit, Jacob Nahinu and Sam Kalua, had been severely beaten at about 5 a.m. that morning at their homes while preparing to go to work as employees of the said Company; that at or about that time affiant examined Jacob Nahinu, one of the persons alleged to have been beaten and observed that he had re-

ceived a severe cut or wound on his forehead which was still bleeding; that at or about the same time affiant also examined Sam Kalua, the other person alleged to have been assaulted and beaten as aforesaid, and observed that he did not have on his body any visible injuries but that his shirt was covered with mud.

That affiant was informed by the said Nahinu that the persons whom he had recognized during the time of such assault were, Mariano Baldua, Abraham Makekau and Antonio Mendes;

That affiant directed that the matter be fully investigated by police officers under his direction and control and that pursuant to such investigation evidence was obtained tending to show that Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso Sipe and Elpidio Siruet together with other persons, the total number assembled exceeding twenty-five, went to the home of Jacob Kalua Nahinu and Sam Kalua at about the hour of 5:00 a.m. and that there, on their home premises, Jacob Kalua Nahinu and Sam Kalua were assaulted and beaten by some of the persons so congregated. That the evidence further tended to show that the persons who so assaulted and beat said Jacob Nahinu and said Sam Kalua included the said Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso Sipe, and Elpidio Siruet. That thereupon affiant swore to a complaint before the Acting District Magistrate of Lanai charging the said Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso

Sipe and Elpidio Siruet with the offense of riot, which charge, affiant is informed, is still pending in the Circuit Court of the Second Circuit, to which the said defendants were committed.

[Seal] /s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 8th day of January, 1948.

/s/ WENDELL F. CROCKETT,
Notary Public, Second
Circuit, T. H.

My Commission expires June 30, 1949.

EXHIBIT J

AFFIDAVIT OF ANDREW S. FREITAS
Assistant Chief of Police

Re: Incident at Kaumalapau Wharf

July 14, 1947

Territory of Hawaii,
County of Maui—ss.

Andrew S. Freitas, being first duly sworn on oath deposes and says that he is the Assistant Chief of Police of the County of Maui, Territory of Hawaii, and that on the 14th day of July, 1947, he was on the Island of Lanai with other police officers detailed from headquarters at Wailuku, to assist in maintaining order during a strike which was then being carried on by workers employed by Hawaiian Pineapple Company Limited;

That at about the hour of 3:05 p.m. on the said July 14th, 1947, affiant arrived at Kaumalapau Wharf on the said Island of Lanai, accompanied by other police officers and that between the time of his arrival and 4:10 p.m. a considerable number of striking employees arrived at said wharf, the number as estimated by affiant being in excess of 125;

That at about 4:10 p.m. a barge arrived at the said harbor and was secured at the dock whereupon certain employees of said Hawaiian Pineapple Co. Ltd. began operations to load such barge with pineapples which were then on the dock; that the employees so engaged being Anthony Fernandes, who started to operate the crane, Frederick S. Johnson, Jerome Harrington, Carl Kluge, Charles Marquez, who mounted the pineapple bins, and Buck Manriki, who remained on the table alongside of the pineapple bins.

That at about this time the strikers, who previously had been standing or sitting near the rail, began to form into two rows or lines with 8 Union "Picket Policemen" in front of them; that suddenly a Union "Picket Policeman" whom affiant later identified as Diego Barbosa, started to run towards the pineapple bins, at the same time the said Diego Barbosa was yelling and motioning for the others who had lined up as aforesaid, to follow him; that the men who had lined up and others who joined them, rushed forward toward such pine-

apple bins, and many of them, including the said Diego Barbosa, mounted such bin where the said Johnson and Harrington were at work; that affiant saw the said Barbosa bending over and apparently beating and striking some one, though affiant could not at that time determine who such person was.

That affiant then looked in the direction of the crane which Anthony Fernandez was attempting to operate and saw one, John Maile, climb up on to such crane and Fernandez at the same time jump off onto the dock; that Fernandez then ran towards affiant, closely followed by 12 or 15 persons who, on catching him, began to mob, beat and assault him, the said Fernandez; that Fernandez then moved backwards in an effort to escape from such assailants and jumped to the lower portion of the wharf where 3 of such assailants followed him and continued in an attempt to strike and assault him; that the said Fernandez then being unable to otherwise escape from his assailants fell or jumped into the waters of Kaumalapau Bay and while swimming and attempting to reach a place of safety was further attacked by his assailants by their throwing and attempting to strike him with pineapples.

That when the rush or charge of the persons assembled as aforesaid commenced and while it was going on affiant yelled and called out loudly to the crowd to stop but that such yelling had no effect.

That affiant constantly endeavored to hold back the crowd and to get them to leave the dock and

return to the entrance of the same where they had previously gathered but was unable to exercise any control of such persons; that after a period of approximately 4 or 5 minutes from the time they first began such charge all of the said persons who had been engaged in such charge and actions as hereinabove set forth ceased such activities and returned back to the stone wall at the entrance of the dock where they had been standing and waiting previous to such charge.

That when quiet had been restored affiant made a check to ascertain what injuries, if any, had been inflicted on any persons and found that Jerome Harrington had been severely beaten about the head and body;

That Fernandez, other than being drenched and having his shirt torn, had suffered no visible bodily injuries;

That numerous pineapple bins had been broken open and large quantities of pineapples had been scattered and spilled about the dock and thrown into the waters of the bay;

That affiant immediately proceeded to make a police investigation of such incident to ascertain the names and identity of the persons taking part therein or responsible therefor, and that he was informed that Diego Barbosa, John Maile, Victor Degano, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda and Shigeyuki Mat-

suura, were among those present who did or aided and countenanced others in doing the acts and things hereinabove set forth.

That upon such investigation and the evidence obtained thereby, affiant swore to a complaint before the Acting District Magistrate of Lanai charging such persons, together with others, whose names were then unknown to affiant, with a violation of the laws of the Territory of Hawaii, to wit, a riot, which charge affiant is informed is still pending in the Circuit Court of the Second Circuit, to which said defendants were committed.

And affiant further sayeth not.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 29th day of December, 1947.

[Seal] /s/ WENDELL S. CROCKETT,

Notary Public, Second

Circuit, T. H.

My Commission Expires June 30, 1949.

EXHIBIT K

In the Circuit Court of the Second Judicial
Circuit, Territory of Hawaii

Criminal No. 2419—Riot

THE TERRITORY OF HAWAII,

vs.

BARTOLOME AGLIAM, et al,

Defendants.

DEPUTY CLERK'S CERTIFICATE

Territory of Hawaii,
County of Maui—ss.

I, D. W. Tallant, Deputy Clerk of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, which Court is a Court of Record having a Seal, Do Hereby Certify that the following documents herewith enumerated, and hereto attached, viz:

1. Copy of Magistrate's Certificate;
2. Copy of Complaint and Warrant of Arrest;
3. Copy of Transcript of the Evidence; and
4. Copy of Decision;

are all full, true and accurate copies of said documents now on file in the Office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii, in the above-entitled cause, and that was filed

Exhibit K—(Continued)

by the District Magistrate of the District Court of Lanai, County of Maui.

Dated: Wailuku, Maui, T. H., December 29th, 1947.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk, Second Circuit Court, Territory of
Hawaii.

Copy

District Court of Lanai, County of Maui
Territory of Hawaii

Complaint

Andrew S. Freitas, first being duly sworn, says:
That Bartolome Agliam, Henry Aki, Guilherme Alboro, Mariano Andres, Domingo Basinga, Mariano Beldua, Valeriano Bugtong, Jose Carranza, Daniel Casil, Honorio Collardo, Lorenzo Del Rosario, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, George Kaohalahala, David Kaopuiki, Daniel Kaopuiki, Abraham Makekau, Kenneth Matsumoto, Casimero Millare, Shigeto Minami, Tiborcio Nesperas, Daniel Niberas, Daniel Norseda, Hiroshi Oshiro, Masahide Oshiro, Mitsuyuki Oyama, Heraldo Pacada, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Mele-

Exhibit K—(Continued)

cio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimzu, Sam Shin, Jack Narcisso Sipe, Elpidio Siruet, Jose Sotelo, Ignacio Sumagit, Gerardo Taal, Tejiro Tengan, Francito Tocason, Nobuteru Tomita, Suterio Unciano, Pedro Unida, Pablo Vea, Andres Velasco, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington, and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and

Exhibit K—(Continued)

others, contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 1st day of August, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

Warrant of Arrest

The Territory of Hawaii:

To the High Sheriff, his Deputy; the Chief of Police of the County of Maui, or any Police Officer in the district of Lanai, County of Maui:

You Are Hereby Commanded on the information of Andrew S. Freitas verified by oath, forthwith to arrest and take the bodies of:

Bartolome Agliam, Henry Aki, Guilhermo Alboro, Mariano Andres, Domingo Basinga, Mariano Beldua, Valeriano Bugtong, Jose Carranza, Daniel Casil, Honorio Collardo, Lorenzo Del Rosario, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi, Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, George Kaohalahala, David Kaopuiki, Daniel Kaopuiki, Abraham Makekau, Kenneth Matsumoto, Casimero Millare, Shigeto Minami, Tiborcio Nesperas, Daniel Niberas, Daniel Norseda, Hiro-

Exhibit K—(Continued)

shi Oshiro, Masahide Oshiro, Mitsuyuki Oyama, Herald Pacada, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Elpidio Siruet, Jose Sotele, Ignacio Sumagit, Gerardo Taal, Teijiro Tengan, Francito Tocason, Nobuteru Tomita, Sutero Unciano, Pedro Unida, Pablo Veas, Andres Velasco, accused of Riot as set forth in the above complaint, if they can be found, and forthwith have their bodies before the District Magistrate of Lanai, County of Maui, at his Court Room at any time between the hours of 9:00 a.m. and 2:00 p.m. of the 6th day of August, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

Bail for Pablo Pineda, one of the defendants above named, is hereby set in the sum of \$1,000.00, and for all other defendants above named bail is set at \$100.00, each.

Dated at Wailuku, Maui, Territory of Hawaii, this first day of August, A.D. 1947.

/s/ CABLE A. WIRTZ,

Judge, Circuit Court, Second
Circuit, T. H.

Executed the within Warrant on the persons of Pablo Pineda, Herald Pacada, Melicio Riutorio,

Exhibit K—(Continued)

Andres Velasco, Mariano Beldua, Guilherme Alboro, Jr., Kenneth Tatsumi Matsumoto, Jose Carronza, Itsuo and Chuck Shimizu, Hiroshi Oshiro, Pedro P. Unida, Lorenzo Del Rosario, Casimero Millare, Ignacio Sumagit, Daniel Narcida, Martin Lono Pokipala, George Ramaila, Daniel Kaopuiki, Jr., Sam Shin, Henry Kau Aki, Narcisso Sipe, Eusticio Hubin, Vicente Companio Salorieman, Simon Hermano, Honrio Collado, Elpidio Siruet, Abraham Makekau, George Kahooalahala, Nobuo Honda, Alipio Sajor, Norberto Quiton, Yoshio Ginoza, Bartolome Agleam, Mitsuyuki Oyama, Pablo Vea, Transito Tacason, Shigeto Minami, Valeriano Bugtong, Daniel Casil, Tiborcio Nesperos, Nobuteru Tomita, Mariano Dugau, Sotero Unciano, Saturnino Gaspar, Masao Gima, Victor Guillermo, Jose Sotelo, Masahide Oshiro, Riyoji Shimizu, Teijiro Tengan, Mashahide Oshiro, Riyoji Shimizu, Teijiro Tengan, Domingo Basinga, therein named, on this 4th day of August, 1947.

/s/ K. TAKAHAMA,
Police Officer.

Executed the within Warrant on the person of Kazuichi Hashimoto.

Named therein, this 5th day of August, 1947.

/s/ K. TAKAHAMA,
Police Officer.

Exhibit K—(Continued)

In the District Court of Lanai, County of
Maui, Territory of Hawaii

Case No. 101—Riot

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al,

Defendant.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii,

County of Maui—ss.

I, Young Wa, Acting District Magistrate of the District Court of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to wit: Copy of Complaint, Copy of my record showing the charges and proceedings against the above named defendants, also one album containing Prosecution's Exhibits "B," "G," "D," "E" and three rolls of film, Prosecution's Exhibits "A," "F," "C," (and cash bond in the sum of \$4,500.00), are true and faithful copies of proceedings had in this Court and are herewith sent to the Circuit Court of the Second Judicial Circuit, County of Maui, Territory of Hawaii.

In Witness Whereof, I have hereunto set my hand this 16th day of September, A.D. 1947.

/s/ YOUNG WA,

Acting District Magistrate, Lanai District Court,
County of Maui, T. H.

Filed Sept. 17, 1947.

Exhibit K—(Continued)

In the District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 101

Wednesday, August 6, 1947

TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al,

Defendants.

RIOT

Counsel for the Plaintiff, Mr. Frank Crockett.

Counsels for the Defendants, Mrs. Harriet Bouslog and Mr. Harold Duponte.

The Prosecution reads the charge to the defendants.

Prosecution: Before they waive preliminary hearing, court please, the prosecution asks that Tei-jiro Tengan, Casimero Millare, Masahide Oshiro and Henry Aki, be dismissed from this case.

The Court: Tei-jiro Tengan, Casimero Millare, Masahide Oshiro and Henry Aki be read as dismissed for this case.

Prosecution: Court please, the prosecution asks that the name David Kaopuiki be striked out from the complaint and the name Daniel Kaopuiki be read instead. The 2nd name is Mariano Andres, and the name Andres Velasco are the same person. His

Exhibit K—(Continued)

correct name is Andres Velasco. The 3rd person is Daniel Neberes and also Daniel Norseda refer to the same person. So his name should read as Daniel Narceda.

The Court: Let the minutes read the names as amended.

Prosecutor: There is one other change, Your Honor. The complaint has the name of Honorio Collardo as alias Gerardo Taal.

The Court: Let the minutes read that the name Honorio Collardo read as alias Gerardo Taal.

Prosecution to counsels for the defendants.

Prosecution: Do you wish to have the complaint interpreted to the defendants?

Bouslog: No, Mr. Crockett, I think they understand Mr. Crockett, whether or not it is customary here, the defendants desire a preliminary hearing now and request that the prosecution proceed with the case. I think the defendants not having been released, the prosecution should be required to proceed. (Correction made with approval of Court 4/27/48.)

Prosecution: The prosecution asks that the matter be passed over sometime when a date is convenient for having a preliminary hearing.

The Court: The court believes that the case should be continued for any convenient time for counsels. Any suggestions to make for a date that is convenient?

Exhibit K—(Continued)

Prosecution: Any date that the court sees satisfactory.

Bouslog: I have full schedule for this week and next week.

The Court: Case continued to the 22nd of August.

/s/ J. K. MEDEIROS,
District Court Clerk,

/s/ YOUNG WA,
District Magistrate.

In the District Court of Lanai, County of Maui
Territory of Hawaii

Case No. 101

THE TERRITORY OF HAWAII,
Plaintiff,

vs.

BARTOLOME AGLIAM, et al,
Defendants.

Friday, August 22, 1947

RIOT

Court convened at 10:55 a.m.

Mr. Wendell F. Crockett for the Prosecution.

Mrs. Harriet Bouslog, Counsel for Defense.

Mr. Crockett: We are ready to proceed, Court please.

Exhibit K—(Continued)

Mrs. Bouslog: We are ready to proceed.

The Court: This case was continued from the 6th.

Mrs. Bouslog: Your Honor, I think the record from the last time shows of the opposition of the Counsel for defendants over the continuance, that the statute of the Territory provides in a mandatory way when the defendants appear, the District Magistrate shall proceed to determine whether there is probable cause that the defendants have been unlawfully held. I want to be sure that the record shows this continuance was over the objection of counsel for defendants. I believe that this proceeding is entirely without authority of law and that the Prosecution or the Court have no authority to proceed at this time. However, the Court overruled the objection that I am merely preserving for the record to show the objection was made to the proceeding.

Mr. Crockett: In other words, subject to your objection, no objection to proceeding at the present time?

Mrs. Bouslog: That is right, Mr. Crockett.

Mr. Crockett: The Counsel wishes to call the roll, or stipulate that the defendants are present?

Mrs. Bouslog: All the defendants are present, Mr. Crockett.

Mr. Crockett: Call Mr. DeMello please.

Exhibit K—(Continued)

FRANCIS B. DeMELLO

Witness sworn by the Court

Direct Examination

Mr. Crockett: What is your name?

A. Francis B. DeMello.

Q. What is your occupation?

A. Lieutenant of Identification, Maui Police Dept.

Mrs. Bouslog: May it please the Court, I would like to interrupt at this time and call attention to the fact that the defendants do not understand English and every and all proceedings be translated for the benefit of the defendants.

Mr. Crockett: Court please, the decisions of the Supreme Court said such procedures are unnecessary when defendants are represented by counsel.

Mrs. Bouslog: Your Honor, that is not the correct statement of the law.

Mr. Crockett: We withdraw the objection and ask an interpreter be called. What *language* you wish it interpreted?

Mrs. Bouslog: Filipino.

(Court recessed at 10:58 a.m. Reconvened at 11:10 a.m.)

(Mrs. Lurita Viduia sworn by the Court as Filipino interpreter.)

Mr. Crockett: What is your name?

A. Francis B. DeMello.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. What is your occupation?

A. Lieutenant of Identification, Maui Police Dept.

Q. As a police officer, were you on the island of Lanai on the 14th day of July, 1947?

A. I was.

Q. Part of your duties as Lieutenant of Identification, do you take photograph or pictures of incidents of that nature? A. I do.

Q. Were you down at Kamalapau on the afternoon of July 14th? A. I was.

Q. What time did you go down there?

A. We went down about 3:30 p.m. on the 14th.

Q. Who else went with you at the time you went down?

A. Assistant Chief of Police Andrew S. Freitas, Captain of Detective John D. Seabury, officer Takahama.

Q. Was Mr. Medeiros, police officer, there also?

A. He was, he came a little after we arrived.

Q. And you know Mr. Billson? A. I do.

Q. And you know Mr. Heminger?

A. I do.

Q. Did you see them there that afternoon?

A. I did.

Q. Do you know Mr. Anthony Fernandez?

A. I do.

Q. Did you see him there that afternoon?

A. Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Do you know Mr. Harrington and a man by the name of Johnson? A. Yes.

Q. You see them there also about that time?

A. Yes.

Q. You know Mr. Marcus and Mr. Pavao?

A. I do.

Q. Did you see them there? A. Yes.

Q. And now when you arrived there at Kamalapau, you saw Mr. Fernandez, Mr. Johnson, Mr. Harrington, Pavao, you recall what they were doing when you got there?

A. We, when I say we, I mean Assistant Chief Freitas, Capt. Seabury, Takahama and myself, had convoyed a truck to the Kamalapau wharf that was operated by Mr. Johnson, and Mr. Fernandez at that time when we arrived at the dock was operating a crane that was unloading freight off the Mana that had just arrived prior to us getting to the dock.

Q. Then Mr. Harrington, what was he doing as you recall?

A. They were—I don't recall—as they were at the dock at the time we got there, but I saw them a little later.

Q. How about Mr. Pavao, what was he doing?

A. Mr. Pavao was assisting with the sling unloading the freight off the Mana.

Q. Now when you got there, were there many other people present at that time besides those that you have mentioned?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. Just after we got there I would say about seven or eight cars arrived at the dock with a group of men, majority of them Filipinos.

Mrs. Bouslog: Mr. Crockett, may I interrupt at this time. Your Honor, I would like to ask for your order excluding witnesses apart from the one who is testifying. I believe the defendants are entitled to have the witnesses who are going to testify today excluded while other witnesses are testifying.

The Court: All the witnesses testifying today may be excused from this Court.

Mrs. Bouslog: Will the judge make his order exclusive, outside hearing of the Court room as well as out of sight.

The Court: You mean the defendants too?

Mrs. Bouslog: The defendants, Your Honor, have by the constitution a right to be present on their own trial even though they are witnesses.

(Witnesses ordered out of the Court room.)

Mr. Crockett: And these people who arrived after you got there, what did they do, Mr. DeMello?

A. They immediately began to picket from a point about 150 feet above the Mana dock.

Q. Would you explain in a little more detail "began to picket"? What did they do? What was the manner of picketing, etc?

A. They got out of the cars and then walked down about 150 feet from the Mana dock, starting

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

a picket line one back of the other and walked as far as the dock and made a circle back. After making one complete circle, they then retired to the sea wall where they sat on the wall while others leaned up against it, while others tried to get to the pavement into the wall into the shade as much as possible.

Q. About how long or how much time did it take for them to march around? How long they continue that?

A. I would say about 10 to 15 minutes.

Q. And after they broke up, did the line broke up, and sat around, is that what you mean? Would you mind explaining that a little more?

A. That is correct. They fell out of rank. In other words, they did not have one line any more, but the majority of them retired to the sea wall, sat on the wall, while others standing on the pavement leaning against the sea wall, and there were few of them walking around but not in a line.

Q. What happened after that?

A. About 4:15 or 4:20 the barge came in and was being moored at the Kamalapau wharf.

Q. And what happened when the barge came in?

A. After the barge was tied to the dock, Mr. Fernandez then climbed upon the crane and four men in the meantime had climbed up on the pineapple bins, and the crowd had moved in the meantime from the sea wall out on the pavement but in the back of the KAPU line that was painted on the dock at that time, and were very orderly just stand-

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

ing and watching. When the sling was raised from the ground and the crane moved the sling on top the bins where the four men were, and as the men on top of the bins, Johnson, Marcus, Harrington and one other whose name I don't recall at the present time, were about to fasten the slings to the pineapple bins, Diego Barbosa was at that time talking in Filipino and later spoke in English "Go, go" and at the same time making motions with his hands for them to follow him.

Mrs. Bouslog: May it please the Court, I am going to interpose an objection at this time. This witness is testifying to hearsay evidence. What Diego Barbosa said is for Diego Barbosa to testify on the stand, not for Lt. DeMello to testify. I would like the Court to instruct the witness to say what he did and said and what he saw, and not what other people saw or what was reported to him.

Mr. Crockett: Did you hear Mr. Barbosa when he said this? A. Yes, sir.

Q. In the presence of the crowd you saw there?

A. Yes, he was present.

Q. And that was said in the presence of the crowd that was there? A. It was.

Mr. Crockett: Court please, we brought testimony up by identifying defendants being present at that time, and we ask that to be received at this time. If it isn't properly connected up then it would be for the Court to strike it off. It is impossible

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

for us—the large number of defendants present make it necessary for us to produce other persons who will properly identify them. As counsel well knows, statement made in the presence of defendants is admissible testimony.

Mrs. Bouslog: May it please the Court, we have no evidence of who was or was not present at the incident at this time so I fail to see how you can connect something that isn't even in evidence.

(Argument by Prosecution and Counsel for Defense.)

The Court: Overrule that objection.

Mr. Crockett: Just a minute ago, Mr. DeMello, you stated, "At the same time Mr. Barbosa made motions with his hands." Would you mind standing up before the Court so the defendants could see and illustrate the motions that were made by Barbosa at that time?

Mrs. Bouslog: Your Honor, I am going to enter the objection that Lt. DeMello's demonstration of what Barbosa did is not the best evidence. There being no showing best evidence is available, Mr. DeMello should not be permitted to demonstrate what Mr. Barbosa did.

(Argument by Prosecution and Counsel for Defense.)

The Court: Objection overruled.

Mr. DeMello: He stood on the dock over there

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

and as he was talking to the Filipinos in Filipino and then later said "Go, go" and motioning with his hands for them to go as he started across. (DeMello demonstrates motions made by Barbosa with his hands.)

Mr. Crockett: Where was he standing at that time with relation to the crowd?

A. In the front of the crowd.

Q. And when he did that, did he remain there or did he move forward?

A. He moved forward toward the pineapple bins with the crowd following him and he ran toward the tables they have over there where they drive the trucks between.

Q. And as the crowd followed him, what pace did they maintain? Walking slowly or walking fast, running slowly or running fast?

A. The front of the crowd started moving very fast, running fast toward the pineapple bins and the back end was moving rather slowly, so that back portion got up to the bins and some of them stopped right at the bins. But they were all mauling around over there while others climbed upon the pineapple bins.

Q. What happened after that when they reached the bins?

A. When they got to the bins some of them had opened up the gates of the bins and pineapples began falling out, while others climbed on the bins and

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

were after these men that were on top of the pineapple bins. They then began punching and beating up individuals that were on the pineapple bins.

Q. What else did you see happen with regard to those men on the bins?

A. They did not remain up there. They got down, I don't know how they got down. They were not up there, later saw one of them that was all wet.

Q. You recall which one that was?

A. Mr. Marcus. I know one was up there on the pineapple bin that about five or six of them were punching at him, but he was on his back. Who he was I could not say.

Q. What else happened after that case you observed?

A. After that the police in the meantime—the other officers were shouting for these men to stop and after they punched at this party on the back for a while, all came down from the pineapple bins and walked out toward the sea wall and went down toward the Mana dock and all mauled around in that area outside the white line.

Q. The time these men started to run as you testified, after Barbosa spoke to them and made the motion, did they go quietly or did they make noise? What was the nature of their moving?

A. They were all yelling as though they were—yelling would resemble something like you see in a western movie when you see a bunch of Indians going at the settlers.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Could you illustrate or give us some of the samples of the yelling?

A. Well, I will try to the best of my ability.

Mrs. Bouslog: Mr. Crockett, to be sure, Mr. DeMello now is representing a crowd of how many people?

Mr. Crockett: I haven't asked him that question.

Mrs. Bouslog: You were asking him to yell.

Mr. Crockett: I did to give us a sample.

(Mr. DeMello gives sample of yelling.)

Q. At the time you heard the yell, by one person or by many people?

A. By a lot of people, not by one individual.

Q. When this movement occurred, referring to the time Barbosa started the action, about how large a crowd had gathered there all together at that time?

A. In my estimation, about 100 to 150.

Q. And about what proportion or what number took part in the rush?

A. It is awfully hard for me to say because they were strung all the way up from a point about 150 feet from the dock. They were along the wall, some were still at the wall while others were grouped I would say about 50 to 75 just in a group close to the bins. This group that was right close started across while the others that were further up started to move down toward the bins also.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Could you give us some idea, about 100 to 150 there, how many were engaged in the actual rush?

A. You mean those that charged the individuals on the pineapple bins?

Q. No, I mean those that took part, any part whatever in the rush, that is, whether they charged the pineapple bins or whether they charged any other portion, in other words, moved approximately from the position. First they had a line behind the KAPU line, in other words moved across the KAPU line.

Mrs. Bouslog: May it please the Court, I object to the question as misleading and unintelligible.

Mr. Crockett: I withdraw that question.

Q. About how many people were engaged in the entire rush, that is, they moved toward the bins or toward the other portion of the wharf that you mentioned?

A. I would say about 100 to 125 of them.

Mr. Crockett: About two minutes to 12 o'clock, I suggest we adjourn for lunch at this time.

The Court: Court will adjourn to 1:30 p.m.

(Court adjourned at 12:00 noon. Court reconvened at 1:32 p.m.)

Mr. Crockett: You want to stipulate defendants all present?

Mrs. Bouslog: Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

The Court: Mr. DeMello is on the witness stand, continue with his examination.

Mr. Crockett: Were you able to recognize any of the persons who were present in this crowd which you described. A. I was.

Q. Who were you able to recognize?

A. Two men. Diego Barbosa and another party with a leather jacket, Pablo Pineda.

Q. Diego Barbosa you know whether or not he has been charged in this offense?

A. He has been.

Q. And Pablo Pineda, is he one of the defendants in this case?

A. Pablo Pineda was one of the ones picked up in the last group.

Q. Is he present in Court now?

A. Yes, he is standing outside on the porch.

Mr. Crockett: Court please, I ask that Pablo Pineda be asked to stand up.

Mrs. Bouslog: Defendants are not required to testify against themselves and that privilege to testify in favor of themselves clearly extends too.

(Argument by Prosecution and Counsel for Defense.)

Mr. Crockett: I withdraw the question. I will ask Mr. DeMello to place his hand on Pineda. Mr. DeMello, will you go and place your hands on the man you believe is Pineda?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

(Mr. DeMello walks over to and places his hand on Pineda)

Mrs. Bouslog: Is this the man you think is Pineda?

Mr. DeMello: I don't think, I know.

Mr. Crockett: Mr. DeMello, during the time that you were down at the scene of this incident, will you state whether or not you made any pictures?

A. I did. I took movies of them with a 16 mm. camera.

Q. Were the films developed?

A. They were.

Q. And have you examined the films to see whether or not it clearly portrays what you saw happened there?

A. I have.

Q. Have you the films with you at the present time?

A. I do.

Q. May I have it? Court please, at this time we ask that the film which witness has just handed to the Prosecution be marked for identification as Prosecution's Exhibit "A."

Mrs. Bouslog: Your Honor, this is just marked for identification? I don't think they have been properly identified as yet as having been taken at the place and time.

Mr. Crockett: That is, after these pictures were taken by you, have they been examined to ascertain whether or not they themselves clearly represent what you saw at the time they were taken?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. I examined them and they were exactly what I saw.

Q. Now can you state, Mr. DeMello, whether or not the film which you just gave the Prosecution to be marked for identification as Exhibit "A," is that what is commonly known as moving pictures?

A. It is.

Q. The individual scenes show on there, approximately what size are these? A. 16 mm.

Q. And will you state whether or not any enlargements have been taken from that film?

A. Some enlargements were made in Honolulu from that film.

Q. Showing you a group of pictures, which is numbered on the back, Court please, from 1 to 55, I ask you to examine those pictures and state whether or not those are enlargements made from the films which you have previously identified as being the ones from that particular location and time.

A. These are all taken by me, the pictures were taken by me, the enlargements made from the many films that I took.

Q. And these pictures you examined before?

A. Yes.

Q. And will you state whether or not these pictures as stills or enlargements or portion of your movie film clearly portray as still pictures what happened there and took place at the time and place concerned which you previously testified?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. They do.

Mr. Crockett: Court please, at this time we offer the film in evidence.

Mrs. Bouslog: May the Court please, I believe the film has not been properly identified to the time which it has been taken. If Mr. DeMello took it in the morning, in the afternoon, after the so-called rush, it isn't properly receivable in evidence. The time which this film was taken has not been fully stated. The date as well as time must be confined to the period which alleged incident is supposed to have happened.

Mr. Crockett: I submit to the Court, Court please, the time and place have been fully identified. Will you please explain to us in detail the time and place you took those moving picture, the film which you identified? What time was it, the portion up until the entire scene was taken?

A. The portion prior to the incident at the Kamalapau wharf was taken on the 14th of July in the year 1947 at about 10 o'clock in the morning. There was one scene of one individual, Casemilo Millare, he was sitting in the car that was taken on one of the pineapple field road as he was sitting in his car. The scene of the incident was taken at 4:30 p.m. on the 14th day of July, 1947, and all the film thereafter that incident was taken at the Kamalapau wharf on the 14th day of July, 1947. Right after I got through taking the scene of the

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

incident I put in a new magazine and took all the individuals at the dock that was over there. After I got through the second magazine I put the third one in and continued to take the rest of the individuals that was over there, kept on shooting different individuals to get a clear identification.

Mrs. Bouslog: May it please the Court, I am going to object to the Court on receiving the film except the time the film was taken of the incident itself. The pictures that were taken in the morning, the pictures that were taken after the incident have no bearing upon the actual occurrence itself and therefore can not be received in evidence. We object to the introduction of the films being received in evidence but particularly to that portion which the witness testified as actually taken not at the time of the incident. Of course, we have not seen the film, we reserve our right to object that be stricken from the record after we have seen the film.

The Court: Prosecution have no objection.

Mr. Crockett: We have no objection. I ask for about five minutes recess to make Mr. DeMello check it over and remove that which counsel have objected.

(Court recessed at 1:52 p.m. Court reconvened at 2:05 p.m.)

The Court: Proceed.

Mr. Crockett: Mr. DeMello, during the recess have you edited your film so that now it includes

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

only the happenings which you testified at that incident on the 14th? A. Yes, it is.

Q. Beginning with what?

A. Beginning with the barge coming in at about 4:15 or 4:20 p.m. on the 14th of July, 1947.

Mr. Crockett: At this time, Court please, we renew our offer to have the film be received in evidence and marked Prosecution's Exhibit "A."

Mrs. Bouslog: Your Honor, the record to show that Counsel for the defendants objects to the introduction of the film on the grounds that we have only the word of the witness that it was taken at the time the alleged incident occurred. I will renew objection after the film is shown if any picture can not be identified at that time.

Mr. Crockett: We have no objection to having it further trimmed only to the incident.

The Court: The Court accepts this film as Prosecution's evidence and mark it Exhibit "A."

Mr. Crockett: At this time Prosecution offers in evidence the pictures numbered 1 to 55 which Mr. DeMello has testified are enlargements of individual scenes from this particular film. We ask that they be received as well as Exhibit "B" and have a police officer paste them on large papers so that they would be easier to handle.

Mrs. Bouslog: May I examine the pictures, Mr. Crockett?

Mr. Crockett: Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

(Court recessed at 2:10 p.m. Reconvened at 2:25 p.m.)

Mr. Crockett: Court please, from the original group that we presented were included some pictures which I thought taken at the time of the incident but taken from the film Court has excluded. They are number 6, 8, 10, 28, 30, 37, 40, 41, 42, 43 and 51. That to be excluded from 1 to 55.

Mrs. Bouslog: May it please the Court, having examined the pictures, it is obvious from the pictures themselves that one can not tell the time or place at which the pictures were taken. Lt. DeMello has testified he took pictures during the course of the strike, he took pictures in the morning, although in the morning of the same day incident occurred, around 4:30 in the afternoon, there is no internal evidence on the pictures indicating the time they were taken. They are so blurred and so unable to discern what the picture is about in many instances. That would be almost impossible for a person to recognize when or where the pictures were taken. For that reason I object to the receiving of the pictures as evidence.

(Argument by Prosecution and Counsel for Defense.)

Mr. Crockett: I withdraw the offer and ask Lt. DeMello. You heard me state to the Court I withdraw certain pictures? A. Yes, I did.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Did you examine the portion of the film that you took off from the original film which you said was taken in the morning so as to exclude from these pictures 1 to 55 and exclude from them those pictures which were enlargements or portion of the film taken outside the incident?

A. I have examined them and I have taken them out from the original 55 that were in the group.

Q. So that then the remaining pictures represent enlargements from portion of the film which was taken during the incident and immediately thereafter?

A. Yes.

Mr. Crockett: At this time, Court please, we again offer the films or the pictures as evidence and marked in a group as Prosecution's Exhibit "B."

The Court: Pictures accepted as Prosecution's evidence and marked Exhibit "B."

Mrs. Bouslog: I already objected to that for the reasons stated.

Mr. Crockett: Have you any objection to having a police officer or the clerk paste this as I suggested?

Mrs. Bouslog: Mr. Crockett, I would like to have the defendants be offered an opportunity to examine the pictures. They can pass them around then they can be mounted after that time.

(Court recessed at 2:37 p.m. Court reconvened at 3:00 p.m.)

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Mr. Crockett: Would you mind proceeding with the cross-examination?

Mrs. Bouslog: I would rather see the films before I proceed with the cross examination of Mr. DeMello.

Mr. Crockett: The machine will have to be run by Mr. Billson. You have any objection to Mr. Billson running the film?

Mrs. Bouslog: No.

(Court recesses to view film run on screen in the Court room.)

The Court: Cross-examination?

Mr. Crockett: I don't think we have much time to proceed any further.

Mrs. Bouslog: I would like to state for the defendants I would like to continue until we conclude the hearing, that the law of the Territory does not contemplate defendants shall be held indefinitely for a felony charge upon a complaint of a police officer which is the case in this instance, and ask that the Court set the case down for the earliest possible time for which counsel and defendants can be present. I believe at the conference during recess it developed that the 28th of August is the first possible date for the continuance of the hearing, I would ask that the hearing be continued at that time, at the same time reserving my objection to not continuing at this time and continuing tomorrow

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

again. Stating for the record I believe these defendants are being illegally held. Prosecution did not at the last time proceed to show evidence of probable cause.

Mr. Crockett: Counsel proposes to have case set on the 28th of August. Court please, Mr. DeMello will be detained in town until the 29th. I think we have other witnesses, we can go ahead and then he will come back before we conclude the hearing.

The Court: Case is continued until the 28th of August. No objection by Counsel?

Mrs. Bouslog: I have no objections except as I have stated. (Correction made with approval of Court 4/27/48.)

The Court: At this time Court is adjourned until August 28th.

(Court adjourned at 3:15 p.m.)

Continued to August 28, 1947.

/s/ MUNAKI MARIMOTO,
Clerk-Stenographer.

Thursday, August 28, 1947

Preliminary hearing continued from August 22nd, 1947. Court convened at 10:10 a.m. with Acting District Magistrate Young Wa presiding.

Mr. Wendell F. Crockett, counsel for Prosecution.

Exhibit K—(Continued)

Mrs. Harriet Bouslog, counsel for Defendants.

Mr. Crockett: We are ready to proceed, if the Court please.

Mrs. Bouslog: We are ready to proceed.

The Court: The interpreter is not here yet. We will proceed.

Mrs. Bouslog: I am able to stipulate again that the defendants are all here.

Mr. Crockett: We so stipulate, if the Court please. As I said the other day, Mr. DeMello had to go to Honolulu and I believe will be back tomorrow or Saturday. Before we conclude, we will have him back for cross-examination.

Mrs. Bouslog: Do you mean Mr. DeMello is not here today? How can we proceed without this witness?

The Court: I thought you understood that.

Mrs. Bouslog: Was an effort made to subpoena him?

Mr. Crockett: It was mentioned the other day.

Mrs. Bouslog: I did not so understand that he was not to be here for cross-examination today. I would like to have the Prosecution show cause as to why Mr. DeMello was not subpoenaed and required to be present today for purposes of cross-examination.

Mr. Crockett: I so stated before and thought that you understood it at that time that he will be here tomorrow or Saturday.

The Court: That was the understanding—that

Exhibit K—(Continued)

he was on vacation and would be back later.

Mrs. Bouslog: I did not so understand it, but it will be in the transcript and will speak for itself when we get it.

Mrs. Bouslog (To Court Stenographer): Are you an official court reporter?

Court Stenographer: No, I am just assisting in the absence of a court stenographer.

Mrs. Bouslog: Then I would like to ask that the court stenographer be sworn. (Court does so.)

Mr. Crockett: Call Mr. Bilson.

The Court: The interpreter is here now. Mrs. Lorita Viduya has previously been sworn, so it will not be necessary to do so again.

Mr. Crockett: We are ready to proceed. Call Mr. Bilson.

Mrs. Bouslog: Again Your Honor, I would like to ask the Court for an order to exclude from the Courtroom all witnesses who are to testify.

The Court: All witnesses who are to testify will please leave the Courtroom.

VAUGHN BILSON

Mr. Vaughn Bilson, being first duly sworn, testified as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Vaughn Bilson.

Q. Now, Mr. Bilson, when I ask you a ques-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

tion will you please pause a little to give the interpreter a chance to interpret to defendants.

A. Yes, sir.

Q. Where do you live? A. Lanai City.

Q. What is your work? Will you speak a little louder, please, so that everyone can hear.

A. Engineer and draughtsman.

Q. On July 14th were you down at Kaumalapau in the afternoon? A. I was.

Q. I was referring to July 14th of this year, 1947. A. Yes.

Q. About what time did you go down?

A. About three o'clock.

Q. When you arrived did you note whether there were many persons present there or did they arrive after you did?

Mrs. Bouslog: May it please the Court, I am going to object to the form of the question, the assumption there were people there in the same question.

Mr. Crockett: The evidence already shows from DeMello's testimony there was a large crowd there.

Mrs. Bouslog: You asked him if they were already there.

Mr. Crockett: That shows in the evidence.

Mrs. Bouslog: But not by this witness.

Mr. Crockett: We will withdraw the question. When you [3*] arrived at the wharf did you notice whether or not there were many people congregated there? A. Yes, I did.

* Page numbering appearing at bottom of page of original certified Transcript of Record.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. What happened after you arrived there,—what took place?

A. Shortly after I arrived more people came down, several car loads.

Q. And these people that came down, what did they do when they arrived there?

A. They left their cars and lined up along the sea wall.

Q. Did you see Mr. Fernandez there at any time? A. Yes, I did.

Q. And Mr. Harrington? A. Yes.

Q. And Mr. Pavao? A. Yes.

Q. When you arrived, what was Mr. Fernandez doing?

A. Preparing to assist in mooring the barge to the dock.

Q. And Mr. Pavao, did you notice what he was doing?

A. He was also directing the mooring of the barge.

Q. Now, then, these people who you say arrived in cars and parked themselves along the sea wall, what else did they do, if anything?

A. They remained rather quiet and congregated at the lower end of the sea wall along the wharf.

Q. How long did they remain like that?

A. Until after the barge had been landed and the crew was preparing to load freight on it.

Q. After the barge was ready for loading what if anything, happened then? [4]

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. Mr. Fernandez went to the crane and started to drop the spreader-bar to the bins.

Q. And what, if anything, did this crowd do then?

A. At that particular instant, nothing.

Q. What happened after Mr. Fernandez started to lift the spreader-bar?

A. The spreader-bar was lowered to the bin and Mr. Johnson, Mr. Harrington and Mr. Marquez prepared to connect it to the bin and the crowd broke into a riot and ran over to the bins, climbed up and started rioting.

Mrs. Bouslog: I object to "the crowd broke into a riot" as a conclusion of the witness.

Mr. Crockett: I think that is plain enough English and not a conclusion.

The Court: Objection over-ruled.

Mr. Crockett: How long did this disorder continue, Mr. Bilson?

A. Only a very few minutes.

Q. Where were you when this happened?

A. I was standing on the extreme makai end of the loading platform.

Q. And at that time, what were you doing?

A. I was taking pictures with a movie camera.

Q. You have the film you took at that time with you? A. I do.

Q. Have you examined that film to see whether or not it gives a true and accurate picture of what you saw? A. I have, and it does.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Does this film contain anything else besides what happened while you were there from the time you arrived until the time the trouble started?

A. There are some scenes on the beginning of the film [5] which were taken prior to my arrival at the Harbor.

Q. Have you the film with you at the present time? A. Yes.

Q. Will you produce the film?

(Witness shows film to Court.)

Q. Can you tell us approximately how much of this was taken before your arrival at the Harbor that afternoon?

A. Approximately the first fifty feet.

Q. And from then on the scenes which were taken were at the Harbor from the time you arrived there until the trouble stopped? A. Yes.

Q. Could you unroll the first fifty feet (witness unrolls film). Court please, I want to offer in evidence the remaining portion of this film which the witness testified as being taken at that time and represents as accurately as possible what happened there from his own observation and would like to ask the Court that the film not be cut as the witness would like to keep it intact. Perhaps we could mark the film.

Mrs. Bouslog: I do not know what is contained in the first fifty feet and it would be improper to

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

receive it as part of the official record since it is irrelevant. I object without a further showing. Mr. Bilson testified he arrived about 3 o'clock, that for a long period of time after he arrived everything was quiet and orderly. There would have to be a separation of the film taken during the alleged incident from the other film which is not shown to have any relevance to the incident which is alleged to have occurred there. I do not think that it is proper to have this offered in evidence. [6]

The Court: That is,—the first fifty feet?

Mrs. Bouslog: No, Mr. Bilson has testified he arrived at the Harbor at 3:00 p.m. and has testified merely that this remaining film was taken from the time he arrived until after the incident occurred. Only the film taken during the incident is relevant.

Mr. Crockett: If the Court please, I think the question of the film which leads up to the incident is just as material. It is certainly not prejudicial to the defendants as he has testified that whatever happened at that time was peaceful and quiet. However, we wish a portion to be received in evidence as it connects up with the case and identifies persons present. We have a right to rely on any evidence leading up to this incident. I think it is material. We ask that all the film pertaining to the case be taken.

Mrs. Bouslog: I think it for counsel for defend-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

ants to determine what is prejudicial to the defendants. This witness has testified an incident occurred at a particular time. He has described the incident and the defendants have a right that there not be introduced evidence against them which is not material. There was no showing by the prosecution that some of the defendants did not leave or that this film was taken at the time when the alleged incident occurred. There was no testimony as to the time when he left,—perhaps it was from 3:00 p.m. until the sun went down.

The Court: Only a portion will be introduced, the first fifty feet will be taken out.

Mrs. Bouslog: There is no question about the first fifty feet. Even the prosecution does not contend that is admissible in evidence. I am talking about what remains the part which Mr. Bilson testified,—he testified that he started taking pictures at 3:00 p.m. (Further argument.) [7]

Mr. Crockett: The Court should pass on the evidence.

Mrs. Bouslog: May I see the film, Mr. Crockett?

Mr. Crockett: Do you want a showing with the Court present?

Mrs. Bouslog: I think I should be permitted to see the film and the defendants should see it.

Mr. Crockett: Do you want it shown in the Court here?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mrs. Bouslog: It is just a matter of examination by counsel.

The Court: We will take a short recess.

(Court recessed at 10:45 a.m. Reconvened at 10:55 a.m.)

Mrs. Bouslog: I do not want to see the first fifty feet.

Mr. Crockett: We can run it through the projector without a light if the defendants do not want to see it. I do not want to do anything to injure the constitutional rights of the defendants.

(Mr. Bilson sets up projector and endeavors to run film. There is some delay.)

Mrs. Bouslog: Let's not slow down the process. As long as it is clear from the record we do not mind your showing the first fifty feet.

Mr. Crockett (to Witness): You may show the first fifty feet.

Mrs. Bouslog: Will you ask Mr. Bilson to state at what point you are beginning to offer this film in evidence?

Mr. Crockett: Mr. Bilson, will you give us a warning when you come to that portion of the film which we want to offer in evidence. (Mr. Bilson runs film in Courtroom.)

Mr. Bilson: It starts here, where the boat is shown coming into the Harbor and then men are running and jumping up on the bins.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mr. Crockett: At this time, if the Court please, we want to offer the film in evidence beginning immediately after the scene showing the arrival of the tug boat and beginning at the time when the crowd is shown rushing [8] over to the bins and climbing upon the bins.

The Court: That portion is admitted as Prosecution's evidence, Exhibit "C."

Mr. Crockett: Now showing you pictures I am going to offer collectively, (hands them to defense counsel for examination).

Mrs. Bouslog: May it please the Court, I believe three of these pictures are taken from the part which was not introduced in evidence. I think these were taken from the film before the part offered in evidence.

(Hands pictures Nos. 74, 68, 69, 70 and 80 to Mr. Crockett.)

Mr. Crockett: If the Court please, I have a group of pictures here and instead of marking them individually for identification I am going to ask Mr. Bilson to identify these first, then will offer them as a group. Mr. Bilson, I have some pictures marked here from 68-80. Would you examine these pictures first of all and tell us if they are enlargements of those pictures admitted in evidence?

The Court: That's exclusive of the first fifty feet?

Mr. Crockett: I will exclude those, it is a mat-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

ter of evidence. Are they made from the movies you took? A. They were.

Q. Now, would you go through these and pick out those made before the first fifty feet of the movies offered in evidence?

(Mr. Bilson looks over the pictures, picks out four pictures.) [9]

Mr. Crockett: These are Nos. 68, 69, 70, 74, those were taken from the first fifty feet and the others, Nos. 71, 72, 73, and 75 to 80, inclusive, were from the portion admitted in evidence?

A. Yes.

Mr. Crockett: We offer this group of pictures in evidence (9 pictures).

The Court: Admitted in evidence and marked Exhibit "D."

Mrs. Bouslog: I would like a brief recess so that the defendants may examine the pictures to see if their facts tally with mine.

Mr. Crockett: No objection.

The Court: We will take a brief recess.

(Court recessed at 11:20 a.m. Reconvened at 11:30 a.m.)

(Mrs. Bouslog hands pictures to Prosecutor Crockett.)

Mr. Crockett: Showing you these pictures marked numbers 68, 69, 70, 74, would you explain when these pictures were taken?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. They were taken shortly after my arrival at the Harbor at three o'clock.

Q. You mentioned in one portion of your testimony that you saw a large number of persons arrive by truck. Do these pictures have any relation to those persons in the trucks?

A. They do. They are pictures of some of the people who arrived by truck.

Q. And about how long before the incident you mentioned regarding the people rushing over to the bins,—about how long before were they taken?

A. About 45 minutes to an hour before. [10]

Q. Do these pictures—referring to these four—do they accurately represent what you saw at the time you took them? A. They do.

Q. If the Court please, we ask that these four pictures be marked for identification.

Mrs. Bouslog: This is nothing but bad faith on the part of the Prosecution. I object. The prosecution stated they would not offer these for identification. I think the Court should reject the offer.

Mr. Crockett: I think counsel misunderstood. I stated the portion of fifty feet prior to the incident. I stated nothing about pictures. I stipulated that the moving pictures would not be received in evidence, that is, the first fifty feet.

Mrs. Bouslog: But Mr. Bilson stated these are from the movies taken.

Mr. Crockett: It can be connected up.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mrs. Bouslog: I reiterate the charge of bad faith.

The Court: Admitted for identification and marked Exhibit "E" for prosecution.

Mr. Crockett: Mr. Bilson, at the time this incident was occurring did you identify any of the persons who were engaged in that incident?

A. Yes.

Q. Would you give us the names of some of those who were identified by you at that time?

Mrs. Bouslog: I object. I think identification is a conclusion of the witness and the question should be answered in a different way, it should be of his own knowledge. [11]

Mr. Crockett: Did you recognize of your own knowledge any persons present there?

A. Yes.

Q. Will you give us the names of the persons you recognized?

A. A man known to me by the name of "Molokai."

Q. Is he present in Court? Could you point him out to us?

A. Yes, sitting next to Mr. Fraser on the front seat.

Q. Do you know what his correct name is?

A. No.

Q. What other person did you recognize at the time?

A. A man known to me as Pablo.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Could you point him out?

A. Yes, he is standing in the doorway (describes him).

Q. Did you recognize any other persons?

A. A man whose name is Quinton.

Q. Would you mind pointing him out?

A. (Looks Around): He is on the porch, sir.

Q. Will counsel object to his coming in to be identified?

Mrs. Bouslog: The individual pointed out by Mr. Bilson will come in.

Mr. Crockett: Is this the man coming in the door, with the blue-striped shirt on? A. Yes.

Q. Who else did you see?

A. A man known to me as "Gigo."

Mrs. Bouslog: As what?

A. "Gigo" is the name I know him by.

Mr. Crockett: I do not think he is one of the defendants.

Mr. Bilson: I do not see him here.

Mrs. Bouslog: He was present at the time but he is not a defendant, to your knowledge? [12]

A. Not to my knowledge.

Mr. Crockett: Not in these present proceedings.

Mr. Bilson: Not so far as I know.

Q. Any other person? A. No.

Q. Do you wish to cross-examine?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Bilson, at what time did you go down to the Harbor that day?

A. Approximately 3:00 p.m.

Q. At what time did the alleged incident occur?

A. Some time after four, I think about 4:30.

Q. At whose direction did you go down to the Harbor? A. Hawaiian Pineapple Co., Ltd.

Q. Specifically, who? A. Mr. D. Fraser.

Q. Were you instructed to take your camera?

A. I was.

Q. Were you down at the Harbor in the morning? A. I was.

Q. Did you take pictures at any time?

A. I did.

Q. You are employed by Hawaiian Pineapple Company and this was considered a work assignment? A. Yes.

Q. What were your instructions from Hawaiian Pineapple Company?

Mr. Crockett: To which we object, if Court please. We are not trying any issue of the Hawaiian Pineapple Company but only of the incident, such instructions would be irrelevant and immaterial in this case.

Mrs. Bouslog: The defendants have a right to show these [13] are criminal proceedings not

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

brought in good faith but brought by private interests and that is why I asked the witness this question. He is an employee of the Company and there was a strike. (Argument.)

Mr. Crockett: The question of good faith does not enter into this picture. The question is whether they should be bound over to a jury and for a trial jury to take into consideration, a question of whether the incident did happen and good faith has nothing to do with it.

Mrs. Bouslog: On the contrary, the proceedings here is for the purpose of determining whether or not there is probable cause upon which your Honor believes that a jury would find these people guilty if indicted. The tests are the same as will take place in the trial.

The Court: Objection sustained.

Q. Were you at the Harbor in the morning?

A. I was.

Q. Did you take any pictures in the morning?

A. I did.

Q. At what time did you start taking pictures?

A. Some time between ten and eleven, I believe.

Q. At what time did you start taking pictures, the pictures that were shown, that is, the whole roll?

A. Shortly after my arrival at three o'clock.

Q. At what time did you start taking the films which were offered in evidence?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. At whatever time the riot started, which was around 4:30, I don't know exactly.

Q. Where were you standing while you were taking the pictures, the pictures offered in evidence?

A. On the extreme makai end of the loading platform.

Q. We do not have a blackboard here, do we? I am not sure of the location of the Harbor. Were you standing inside the so-called "kapu" line down at the Harbor? (Prosecution hands counsel a map of the Harbor.) Will you point out on the map where you were standing? (Witness points out approximate spot on map.) For the record we will stipulate that is Kaumalapau Harbor. Now, were all the pictures introduced in evidence taken from that point? A. No.

Q. Will you describe what you did from the time the pictures shown in evidence were taken, that is the point where you stood while you took these pictures? You may indicate on the map.

A. I climbed on top of the next bin to here, I was standing here (points to map, approximate location).

Q. Were you taking pictures all during the time the alleged incident occurred.

A. No, it took some time in between to wind the spring in the camera, that took a little time.

Q. Mr. Bilson, you have stated to the Court that you recognized a person known to you as "Molo-kai," is that correct? A. It is.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. At what time approximately in relation to the happening of the incident did you first see this individual? That is, when you came down there that afternoon?

A. I saw him arrive shortly after I did.

Q. How long have you known this individual? This person known to you as "Molokai"?

A. For the past several months.

Q. How did you become acquainted with him?

A. He works in the Engineering Department, as I do.

Q. Did you observe this individual at all times during the course of the happening?

A. Not at all times.

Q. Will you state whether you can positively identify or testify that the person known to you as "Molokai" was present at all times when the alleged incident is supposed to have occurred?

A. He was there when it started and was there when it finished.

Q. You mean he was present. He was at the Harbor, is that what your answer indicates?

A. Yes.

Q. You mean he was at the Harbor at the time of the alleged incident? A. He was there.

Q. Will you tell what you observed, what you yourself saw him doing during the time the alleged incident happened?

A. I saw him run in with the rest of the crowd,

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

milling around with them and help to open and spill out the pineapples in the bins.

Q. How many people were in the group that ran in and milled around?

A. I did not count them, but I would judge about one hundred and fifty.

Q. I believe your own pictures do not show that many.

A. My pictures cannot take in as many as my eyes can due to the limitations of the camera.

Q. In other words, the pictures do not represent actually what you saw?

A. They represent portions of what I saw.

Q. Now, you stated you saw "Molokai" run in, mill around with the others. Can you positively swear he was in the group at all times? [16]

A. I cannot say at all times.

Q. Mr. Bilson, at the time when this alleged incident occurred, how many police officers were present? A. There were six, I believe.

Q. Will you name them, please?

A. Asst. Chief Freitas, Lt. Medeiros, Officer Takahama, Officer Bironde, a Captain of detectives, I believe from Maui, whose name escapes me at the moment.

Q. And how many employees of the Company were present? A. About six or seven.

Q. Will you name those you can recall?

A. Mr. Harrington, Johnson, Marquez, Pavao, Fernandez, myself.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. That's all you can positively recall and identify as having been present? A. Yes.

Q. Will you state if any police officer present at the time you were present read the law to the defendants or ordered them to disperse?

A. I did not see or hear it.

Q. When you were present, if a police officer had, you would have seen or heard it?

A. Not necessarily.

Q. Well, you stated that this is a map of the Harbor and you were standing here during the time you took the pictures.

A. I did not say that.

Q. Will you describe where else you went?

A. I was chased off and went down to the barge.

Q. The alleged incident all occurred in this area? Right here? (points to map.) [17] Now how long have you known Pablo Pineda, or the man known to you as Pablo Pineda?

A. I have seen him around town for several months.

Q. You know him only by name? Just by seeing him around? He does not work with you?

A. No.

Q. You do not think it is possible you could confuse him with some one else?

A. Not now.

Q. We are talking about July 14th—do you think you would have been able to pick him out of a crowd of people? A. Yes.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Will you state when you first saw this individual known to you as "Pablo" on that afternoon? The time?

A. The time by the clock I would not know.

Q. Will you state how long you have known the person known to you as "Quinton"?

A. About six months.

Q. How did you become acquainted with him?

A. He works in the Carpenter gang.

Q. And did you observe this individual known to you as "Pablo" at all times during the alleged incident?

A. It would have been very difficult to observe any one individual for the entire period down there.

Q. As a matter of fact, Mr. Bilson, it would be almost impossible to identify an individual among a crowd of people down there and recall just what each individual was doing during the course of time.

A. It would be difficult to say what he was doing during the entire time, but I can recall seeing each of these individuals at certain times and places, doing certain things. [18]

Q. And the defendants you have mentioned are the only individuals you could identify by sight and nickname at the Harbor that day?

A. Yes.

Q. That's absolutely all you could identify of your own knowledge.

A. There is one more.

Q. In other words you could identify by sight

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

and knowledge, your own personal knowledge, five persons present outside of the supervisors and police officers?

A. The number I mentioned before.

Q. Will you state then the number of individuals you could recognize of your own personal knowledge?

A. The number I gave you before, plus one more which I recall since I have been here in Court.

Q. I asked for the number, Mr. Bilson.

A. Five would be correct.

Q. How long have you lived here on the island of Lanai?

A. Approximately one year and six months.

Q. During all that time you have been employed by Hawaiian Pineapple Company? A. Yes.

Mr. Crockett: You say you recall another person, could you give us his name? A. Makekau.

Q. He is present here?

A. I think he is. I saw him standing in the doorway a moment ago. (Points him out.)

Q. Sitting on the porch with a bright yellow shirt on—standing now in the doorway?

A. Yes. [19]

Mrs. Bouslog: At what time did you first recognize Mr. Makekau?

A. I have just now recalled the name.

Q. At what time did you notice the person you have now recalled?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. Sometime before the riot started, shortly before.

Q. That would be, in your estimation, around four?
A. Approximately.

Q. Now this person whose name you have recalled, did you have him under observation at any time during the course of the so-called alleged incident?

A. As an individual among the crowd.

Q. In other words, you cannot testify as to anything he did as an individual apart from the crowd?

A. No.

Q. That's all.

The Court: Court will recess until 1:30 p.m.

Mrs. Bouslog: May we have a shorter adjournment?

Mr. Crockett: I think 1:30 p.m. is a reasonable time.

The Court: Court will recess until 1:30 p.m.

(Court recessed at 12:00 noon. Reconvened at 1:35 p.m.)

Mrs. Bouslog: We are ready to proceed, Your Honor.

The Court: The Prosecutor will be here in a few minutes.

Mr. Crockett: We are ready to proceed, Court please. Call Mr. Heminger.

Exhibit K—(Continued)

MURRAY V. HEMINGER,

being first duly sworn, testified as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Murray V. Heminger.

Q. What is your occupation?

A. School principal. [20]

Q. On July 14th of this year 1947 were you down at Kaumalapau wharf here on Lanai, on that afternoon between 3 and 5 p.m.?

A. I was.

Q. About what time did you say you went down there?

A. My wife and family and I left here shortly after three o'clock.

Q. The testimony so far shows that sometime after three o'clock a barge came in and Mr. Fernandez and others prepared to tie up the barge,—were you present about that time?

A. I was.

Q. And there is also testimony tending to show at or about that time a large number of persons present rushed over to the bin where some of the men were working. Were you present when that happened?

A. I was.

Q. About where were you when that trouble happened?

A. I was on the stone wall next to the Mana dock and sitting right near John Maile at the time, about sixty feet from where the bins were stacked up on the wharf.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. And while you were down there did you at any time take pictures of what happened?

A. I did. I took some moving pictures at that time.

Q. When did you start taking the moving pictures, that is, at what period of that action was it that you began to take pictures?

A. I would say just shortly after a riot broke out and over a hundred odd men rushed the pineapple bins there.

Q. How long did you continue to take pictures of what was happening there? [21]

A. I took pictures until the film ran out of the camera, I estimate about 15—20 feet.

Q. And the film which you took at that time, has it been developed?

A. The film has been developed and I have it right here.

Q. Have you had occasion to examine the pictures after they were developed? A. I have.

Q. Will you state whether or not the pictures which were taken which are shown on the film accurately portray what took place at that time?

A. I would say that the films are accurate. I remember distinctly the setting of the camera at 32 frames per minute and the distance of about 60-80 feet that I was away from the bins and the shutter speed at—

Mrs. Bouslog: I will waive this technical business of the camera.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Mr. Crockett: O.K.

Q. Do you have the film with you?

A. Yes.

Q. Court please I want to exhibit this film before offering it in evidence. Does this contain any other scene except what you are testifying to?

A. No other scene.

(Mr. Crockett hands film to Mrs. Bouslog for examination.)

Mr. Crockett: Mr. Bilson, will you run this film?

Mr. Heminger: I can run it, to save time. (Film shown.)

Mr. Crockett: If the Court please, we offer in evidence this portion of film which was shown and ask it be marked Exhibit "F". [22]

The Court: Received in evidence and marked Exhibit "F".

Mrs. Bouslog: I would like before you make your ruling to object to the introduction of the film which was taken after the time of the alleged incident as it has no relevance to the charge.

Mr. Crockett: You mean the part where the pineapples are shown to be spilled around outside?

Mrs. Bouslog: It's a matter of time.

Mr. Crockett: I think it was taken at the time.

Mr. Heminger: After the men withdrew from the scene?

Mrs. Bouslog: This is highly irregular. If Mr. Crockett wants to question the witness, okeh, but

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

the witness should not ask questions. I believe the witness stated these were taken after the incident occurred?

Mr. Crockett: I don't know if it makes much difference, just a few pineapples on the ground. It is part of the *res gestae*, if the Court please. What part do you want taken out,—the part which came after the specific incident where the bins opened and pineapples are shown strewn on the ground?

Mrs. Bouslog: I believe no pineapples were charged, Mr. Crockett.

(Argument.)

Mr. Crockett: I submit to a ruling, if Court please.

The Court: Court will admit this as evidence.

Mr. Crockett: Mr. Heminger, showing you eleven pictures (will you examine these, Mrs. Bouslog)—hands them over for examination and they are examined and returned—which are marked 57 to 67 inclusive, I will ask you to examine these pictures and state whether these reproductions are taken from the film just exhibited by you?

A. I would say these are, although they are not arranged in order of the film shown. (Examines pictures.) [23]

Q. But they are reproductions?

A. I would say they were.

Q. Do they truly and accurately portray the scene as you saw it at the time?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. Yes, they do.

Q. If the Court please, we offer in evidence pictures numbered from 57 to 67 inclusive and want to mark it as prosecution's Exhibit "G".

The Court: Admitted in evidence and marked Prosecution's Exhibit "G".

Q. Cross-examine.

Cross-Examination

By Mrs. Bouslog:

Q. Why did you go down to the pier on that day?

A. Merely to take my family, my daughter, my son and a lady visiting us to the Harbor to swim.

Q. Were you asked to go down there by the representatives of the Hawaiian Pineapple Company?

A. I was not.

Q. Were you standing by the wall at all times when you were taking the pictures, by the stone wall?

A. Not at all times, but most of the time right in the vicinity.

Q. In other words, you never crossed the so-called "kapu" line?

A. No, I never crossed the line. If you are talking about the time of the incident, no,—after the incident, I did.

Q. How long have you known Mr. Maile?

A. About four years. I have been fishing with him.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. You say he was standing beside you at the time when the alleged incident happened?

A. No, at the time he was not standing there, at the time before, he was sitting and standing both.

Q. During the time the alleged incident happened, was part of the crowd standing completely outside the kapu line?

A. I believe that they were, I am not sure. I think most of them were outside the kapu line, although I am not sure.

Q. And how many would you estimate were inside?

A. I could not tell you—is this before the incident?

Q. I am talking about during the incident. The question was at the time the alleged incident happened. Will the Court instruct the witness to try to understand the questions?

(Argument.)

Mr. Crockett: Counsel's question is hard to understand.

Mrs. Bouslog: Just answer the question as asked.

The Court: Do you understand that?

A. All right.

Q. What time did you say you went down there. What time did you get down there?

A. I got there twenty to twenty-five minutes after three. I do not recall the exact time.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. At the time you got down there, how many people do you estimate were in the crowd?

A. At the time I arrived there, there were probably a couple dozen there.

Q. Around 24 people? How many supervisors of the Hawaiian Pineapple Company were there that you recognized when you got down there?

A. The only ones I recognized—I have a list——

Mrs. Bouslog: Will the Court instruct the witness to answer the questions put to him without reference to any list?

The Court: Please answer the questions.

Q. How many Company supervisors did you recognize?

A. I would rather name them than to make a guess at them. [25]

Q. I will re-state the question—will you name all the Company supervisors you observed during the time you were down there?

A. I recognized Mr. Munro, Mr. Pavao, Mr. Fernandez, Mr. Bilson, Mr. Kluge, Mr. Fred Johnson, Mr. Harrington, Capt. J. Calhau. I am not sure of Capt. Calhau, the Mana may not have arrived by then. That's all I can recall off-hand. Oh yes, Mr. Marquez was there. Mr. Fraser was there.

Q. In other words, that is all the Company people you recall? Did any of the Company people present ask you to take pictures? A. Yes.

Q. Who?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. Mr. Bilson asked me if I would take some pictures. He had two cameras and I said sure I would.

Q. In other words, he asked you specifically to take pictures? A. That's right.

Q. How many police officers were present at the time you went down there?

A. I would say five or six.

Q. Did you recognize any of them by sight or name? A. I did.

Q. Will you state the names of those whom you recognized?

A. Officer Takahama, Lt. Medeiros, Mr. Freitas, I do not know his capacity, from Maui, and the gentleman who testified the first day, a police officer in uniform, I do not know his name, a Mr. Seabury and a Mr. Murayama. He was in civilian clothes. I know he is a police officer because I played golf with him. That is all I can recall.

Q. Did any of these police officers, at any time that you observed, read the riot act to the crowd?

A. What do you mean by the riot act? [26]

Q. By riot act I mean the law which says the police are supposed to read, "You are hereby unlawfully assembled," etc.,—(explains statute.)

A. That I do not know.

Q. Well, you were present at all times weren't you? A. Yes.

Q. Did the police officers address the crowd as a whole?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. When the men broke across where they started to load the bins I saw them definitely try to stop the crowd from rushing.

Q. I am asking you if they spoke to the crowd as a whole. A. That I do not know.

Q. You did not observe any police officer ordering any crowd to go home before or during the time the incident was happening?

A. The officers told them to get back.

Q. Did you at any time hear any police officer order the crowd to disperse or go home?

A. The answer is no.

Q. You stated that there were about twenty-four people present at about 3:20?

A. That's my estimate.

Q. Did any people come down after that?

A. Yes.

Q. About how many and how much after?

A. I would estimate 100 to 150 people arrived later.

Mr. Crockett: Court please, counsel has asked for an interpreter and is not using the interpreter. It is a big disadvantage when I have a question to ask and I think she should labor under the same disadvantage. [27]

Mrs. Bouslog: The interpreter is here for the defendants, but the answer does not always have to be translated. Mr. Heminger, when did the people come down, before or after the alleged incident?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. The 100 to 150 came down before the alleged incident happened.

Q. What time did you leave the Harbor?

A. I left the Harbor some time after five o'clock.

Q. About how long was that after the incident was over?

A. I would have to guess,—15 to 20 minutes, I am not sure.

Q. Your best guess is 15 to 20 minutes?

A. It would be just a guess, probably about 20 minutes.

Q. Did you observe any people coming down after the incident was over? A. I did.

Q. How many?

A. I observed one small truck load of men.

Q. Is that all? A. That's all I noticed.

Q. About how many people would you estimate were in that truck?

A. Possibly twenty, more or less.

Q. You said a while ago that you observed while the incident was going on there were some people who were standing completely outside the kapu line?

A. I believe there were some people standing outside the kapu line.

Q. That's along the stone wall? A. Yes.

Mr. Crockett: You mentioned that the men broke across. What did the police officers do when they started breaking across?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. As I recall, the police officers made a desperate attempt to stop the crowd from going across.

Q. And at this time when they broke across the line, was any warning given that would cause a person to believe it was going to happen or did it happen suddenly?

A. As I recall it, it seemed to me, I am quite certain that men with arm bands marked "union police" started to talk to the crowd. I did not understand it as it was in a foreign tongue. There was some excitement there and I felt something was going to happen.

Mrs. Bouslog: May I move the answer be stricken. What the witness believes is incompetent.

Mr. Crockett: No objection. Was there any warning? Was the motion made rather sudden. Counsel has asked whether the police read the riot act. Was there anything that happened which would indicate something was about to happen?

(Argument between counsel on this question.)

Mrs. Bouslog: I believe the question is improper, but will leave it to the Court.

The Court: Objection overruled.

A. To answer that question, the crowd started to surge forward and as I recall it, the Assistant Chief of Police tried to get them to go back. They broke shortly after that.

Mr. Crockett: That's all.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Mrs. Bouslog: The Assistant Chief of Police attempted to get them to go back across the kapu line—was this the “desperate attempt”? What actually did the Chief do?

A. The Chief tried to quiet them down and tried to talk to them and actually signalled to them not to come forward, that is all I recall seeing. [29]

Mrs. Bouslog: That’s all.

Mr. Crockett: That’s all.

ANTHONY D. FERNANDEZ

being first duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Anthony D. Fernandez.

Q. Where do you live?

A. Kaumalapau, Lanai.

Q. Now when I ask you a question, will you please pause a bit to give the interpreter a chance to interpret the question. Where are you employed?

A. Down at Kaumalapau wharf.

Q. Were you down at Kaumalapau on July 14, 1947?

A. I was.

Q. Do you recall in the afternoon say between three or four o’clock an incident happening there where persons engaged in picketing rushed forward

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

and made a charge on the pineapple bins and other things of that nature? A. I do.

Q. What were you doing when that happened?

A. I was operating the crane.

Q. Was that after the barge came in?

A. Yes.

Q. Tell the Court just what happened to you, if anything, from the time the barge came in, in connection with this incident that I just mentioned.

The Court: Do not make your statements too long so that it will be easier to translate.

A. When the barge came in, I went on the crane to load the pineapple bins from the wharf to the barge. As soon as I hooked on to the first bin, before it was lifted from the dock, people were around rushing on the bin. I remained on the crane until some of the men came up to [30] attack me, then I left the crane and went down and stood on the wharf. When I got down from the crane I stood around and some of the men came for me, grabbed me from the back and started shoving me around. Before I knew it, there was a whole flock of men all around me, some of them punching, pulling, shoving. I forced my way down to the smaller wharf. When I got down to the small wharf these men that were chasing me stopped so I went back and talked to some of them. I told them everything was all "pau" that we won't be loading the barge. After I got through they started after me again.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

I got to the edge of the wharf. They were shouting and instead of going flat I went overboard. When I got in the water I started swimming towards the small boat that was on the side of the barge. I climbed up on the smaller boat and remained there until we took the barge out to the tow boat.

Q. While you were in the water did anything happen to you?

A. While I was in the water someone threw pineapples at me.

Q. What did you do then when they threw pineapples at you? A. I dived underneath.

Q. Did you recognize and can you identify any of the persons who climbed up on the crane which you were operating? A. Only one.

Q. Who was that? A. John Maile.

Q. Did you identify or did you recognize any of the other persons who were present during or since this trouble? [31]

Mrs. Bouslog: I object. It is all right to ask for identification, but counsel cannot ask if he identified any of them since. He is supposed to testify to what he saw and observed.

Q. I am asking if he identified any persons who were there at that time.

Mrs. Bouslog: That is all right.

A. A few.

Q. Will you give us the names of those persons?

A. Pavao, "Buck" Manriki, Fred Johnson, Har-

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

rington, Bilson, Sgt. Takahama, Asst. Chief Freitas, Lt. Medeiros, Capt. Seabury.

Q. Any others you recognized?

A. There was a little group of men sitting on the sea wall quite a distance away from where we were supposed to be working.

Q. Do you know the names of any of these men who were there?

A. There was John Maile. There were so many of them, I could not see very well to identify distinctly. It's been so long. There was Alipio Sajor.

Q. Where did you see Alipio Sajor?

A. He was standing next to me, right next to the crane.

Q. What time was he standing next to you, was that at the time the trouble happened, or before, or afterward?

A. While the trouble was going on.

Q. Do you recall any others that were there while the trouble was going on?

A. There was this guy by the name "Gigo."

Q. Gigo,—where was he, where did you see him?

Mrs. Bouslog: May it please the Court, there is no showing that he is one of the—oh, all right, go ahead.

A. He was on a table next to the pineapple bin.

Q. Do you recall any others?

A. Before or after the trouble?

Q. Well, do you recall any who were there immediately before the trouble?

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

A. There were two steward trucks there. But there was so big a group of men I could not very well identify them. My mind was set on loading the barge. I did not take notice very much of the individuals.

Q. Is that all you are able to recall right now?

A. That's right.

Q. You know a man by the name of Kaopuiki?

A. I do.

Q. What is his first name?

A. We have three working for us down at the Harbor, one is Isaac, one Harry, and Daniel.

Q. Do you recall seeing Daniel Kaopuiki at any time that afternoon?

Mrs. Bouslog: May it please the Court, this witness has identified all the people he recognized and now the prosecution is trying to coach his own witness, and the question should not be allowed. That
ness, and hte question should not be allowed. That is all that is competent for this Court to receive.

Mr. Crockett: When a witness has exhausted his memory the prosecution is allowed to question him to refresh his memory. This is an important question, your Honor.

Mrs. Bouslog: I would like counsel to submit his authorities. Might we have a brief recess?

Mr. Crockett: I do not need a recess, I can find it in a minute. (Reads from law book. Further argument.)

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Mrs. Bouslog: But this witness has not indicated his memory needs refreshing. He stated his mind was on the pineapple barge. This section that Mr. Crockett read [33] has no application to the case in which the witness has testified directly that he has named all the people he could identify. Are you impeaching your own witness?

Mr. Crockett: If it becomes necessary, I may have to. If he still maintains he did not see these people I may have to. I do not think it will be necessary to go that far.

Mrs. Bouslog: The prosecution does not indicate his intention to impeach his own witness. What he wants to do is refresh his memory. The witness has stated that he has thought of all the names of the people who were there on that particular occasion. Since Mr. Crockett's witness has so testified, Mr. Crockett is bound by that testimony unless he wants to impeach his own witness. Will you impeach your own witness?

(Further argument.)

Mrs. Bouslog: The ruling in criminal trials, and in civil trials is that the person using a witness or calling a witness is bound by the testimony. (Reads from law book.)

Mr. Crockett: Then I will if it becomes necessary.

Mrs. Bouslog: (Reads from law book.) The

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Court must give permission to introduce evidence and when the Court has given permission then Mr. Crockett may——

Mr. Crockett: Just a minute—will you read the rest of that section there? (Counsel reads from Sec. 9845, R.L.H. '45. Page 1314.)

Mrs. Bouslog: You should ask leave of the Court to impeach your own witness and when you have been given permission then you may proceed to follow the statute, otherwise——

Mr. Crockett: I ask leave to impeach this witness, as he has previously made a statement that he recognized two other persons, Kaopuiki and Pokipala.

The Court: You are so allowed. [34]

Mr. Crockett: Do you recall, Mr. Fernandez, making a statement to the police that you also recognized Kaopuiki?

Mrs. Bouslog: I believe you are not following the statute.

Mr. Crockett: I know what the statute is. I am doing so,—all in its proper time and place.

Mrs. Bouslog: (Reads from law book.)

Mr. Fernandez: I do.

Mr. Crockett: Is it a fact that you did recognize Kaopuiki at that time and place?

A. I did.

Q. Whereabouts did you see Kaopuiki?

A. He was sitting on the sea wall.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Q. About what time in relation to the time you say you were operating the crane, before or after?

A. Before.

Q. How long before?

A. About half an hour before.

Q. Which Kaopuiki was that?

A. Daniel Kaopuiki.

Q. He is present here in Court?

A. He is.

Q. Can you point him out to the Court?

A. He is there in the white shirt, last seat.

(Points him out.)

Q. Will you go and put your hand on his shoulder. (Witness indicates third man from the aisle sitting in the rear seat, wearing a white shirt, and puts hand on shoulder.)

Q. Did you make a statement to the police officers that you recognized a man by the name of Pokipala? A. Yes.

Q. Where did you see him?

A. Sitting on the sea wall.

Q. And about what time was that, when you saw Pokipala? [35] How long before or after the incident which happened to you?

A. About half an hour after.

Q. Is Pokipala present here? A. He is.

Q. Will you point him out to the Court?

A. He is sitting here. Witness goes to Pokipala and places hand on shoulder.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Q. You mentioned Alipio Sajor? Did you see him?

Mrs. Bouslog: If the Court please, Mr. Crockett has impeached this witness. He is now going back to direct examination. After impeaching this witness he is not permitted to resume direct examination.

Mr. Crockett: Why do you say I am not permitted to resume direct examination?

Mrs. Bouslog: Well, I cannot see, at this point,—

Mr. Crockett: Well, then, proceed with cross-examination.

Mrs. Bouslog: No questions.

Mr. Crockett: We will ask for a recess.

The Court: We will take a short recess.

(Court recessed at 3:25 p.m. Reconvened at 3:40 p.m.)

KIICHI TAKAHAMA

being first duly sworn, testified as follows:

Direct Examination

Q. What is your name?

A. Kiichi Takahama.

Q. What is your position?

A. Police Officer, Maui County Police.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Are you stationed on the Island of Lanai?

A. Yes, I am.

Q. Were you here on the 14th day of July, 1947?

A. Yes, I was. [36]

Q. Were you down at Kaumalapau landing between the hours of three and five on that date?

A. I was.

Q. About what time did you go down there?

A. About 3:30 p.m.

Q. And who did you go down there with?

A. I was with Asst. Chief Freitas, Capt. Seabury, Lt. Medeiros, Lt. DeMello, Officer Murayama.

Q. When you arrived at the wharf did you notice whether or not any of the employees of the Hawaiian Pineapple Company were already there, working there?

A. I did notice some of them were there.

Q. And at the time you arrived, what employees did you see present? I am referring to working there when you arrived?

A. I have seen the following persons, Anthony Fernandez, Manuel Pavao, Jerry Harrington, Fred Johnson.

Q. Any others? Do you recall any others? What was Mr. Fernandez doing when you arrived there?

A. He was tending to the barge that just got in.

Q. When you arrived there did you notice whether or not there were any large group of men in a picket line or anything of that nature?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I did notice about 150 men.

Q. Were they there before you got there or did they come after you got there?

A. They got there shortly after we got there.

Q. How did they arrive there?

A. I have seen the cars coming down the wharf. The men alighted from the cars and gathered along the stone wall, stretched out for about fifty yards.

Q. Did you notice a kapu sign there, that is, anywhere nearby on the wharf?

A. I did notice a sign over there.

Q. From that kapu sign there was a white line painted [37] somewhere?

A. Yes, the kapu sign was there and a white line was marked over there in the area in which the people were working.

Q. When these people arrived, as you have just testified, and strung along a line of fifty feet or more, were they anywhere near the kapu sign or white line. What was their position in relation to that sign or line?

A. These men were all on the stone wall. There is a distance between the sign and stone wall of about 100 feet. It was about 4:30 p.m. that the men got across the kapu sign and into the working area.

Q. When they first arrived what did they do? Where did they stay with respect to the sign and the line?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. When they first arrived they gathered in about two files stretched about fifty yards from the Mana wharf towards the northern section of the stone wall. There were several union police with arm bands.

Q. What were they doing at that time?

A. Some of them were standing, some sitting down.

Q. Were any engaged in marching, moving around at all?

A. The men with the arm bands were doing most of the walking up and down. The men gathered over there were in a steady manner, some talking, some moving about.

Q. And up until about 4:30 p.m. they remained on the unrestricted side of the kapu line?

A. Yes, they were on the unrestricted side of the kapu line.

Q. Were you there when the barge came in and was docking alongside the wharf?

A. Yes, I was there. [38]

Q. Was there any noticeable change in what the crowd did immediately after the barge was docked from what they were doing immediately prior to that time?

A. Yes, these men gathered along the sea wall seemed manifestly excited. Most of them were talking in Filipino, so I do not know what they were talking about.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. And what, if anything, did they do besides talk in an excited manner?

A. As soon as the barge got in and got moored the men on the northern end of the stone wall were converging in a downward movement towards the pineapple bins stacked inside the white line.

Q. And did they form any line or anything of that nature?

A. They were in a long string or line, it is hard to say if they were in a line in a group stretched for about fifty yards.

Q. And then, what happened after that?

A. About 4:30 p.m. Sonny Fernandez was operating the crane. He was about fifty feet from us. We were standing outside the white line. The spreader was being put on the bins, about eight bins there. Some of the men were working on top of the bins. As soon as the men were attempting to hook up the bin to the pineapple spreaders these men rushed into the white line, that's the men who were standing along the sea wall. They rushed inside the white line and some of them got on top of the pineapple bins.

Q. You mentioned that Sonny Fernandez was operating the crane. Was he the one just in here a few minutes ago as a witness?

A. Yes, he is the person.

Q. Was any person up on top of the bin?

A. The only person I recognized on top of the bin was Harrington. [39]

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. When these men, as you say, rushed forward, what happened?

A. Sonny Fernandez was operating the crane inside at the time of the rush from these men and I saw John Maile get on top of the crane and I seen Sonny run down the makai side of the crane and he got in the midst of these men who rushed into the white line.

Q. Just before this rush occurred did you notice whether or not any person gave any kind of signal either by voice or motion which started the rush.

A. This fellow I recognized over there was Diego Barbosa.

Q. Does he have any other name or nickname?

A. I have known him as "Gigo."

Q. Do you know whether or not he is one of the defendants at present before this Court?

A. He is.

Q. Isn't he one of the defendants already committed to the Grand Jury? Have you got that clearly in mind?

A. He has already been committed.

Q. So that he is not one of the defendants present before the Court in this case?

A. No.

Q. What kind of sign did "Gigo" give to start this off?

A. "Gigo" was talking in Filipino, which I do not understand, and he was followed by several others. They all got into the white line.

Q. Did you see him make any sign besides talking?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. No, I did not see any signs. I saw him talking.

Q. Now, you have mentioned, getting to the point where you saw John Maile climb up on the crane. What happened after he climbed up on the crane?

A. After John Maile got on top of the crane, Sonny [40] Fernandez ran down. He was running down towards the makai side of the wharf and got into the group of men who rushed into the white line.

Q. What happened after that?

A. Well, the men who got into the white line were chasing after Fernandez and Fernandez was making an effort to escape. He dodged here and there among the men and finally jumped into the water.

Q. What happened after he jumped into the water?

A. After Fernandez jumped into the water the men who rushed into the white line they were seen all along the wharf area near the crane and inside of the barge that was docked and some of them were still on the bins, the pineapple bins.

Q. Did you see anything happen to anybody on the bin? A. That I did not see.

Q. What else did you see which happened or occurred at that time?

A. After Fernandez got in the water I have seen the eight bins on the wharf and the side doors were

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

opened and the pineapples were left on the ground and on the wharf and some of the pineapples were thrown in the wharf area.

Q. What other persons did you recognize there during this incident?

A. The men I recognized in the incident inside of the white line were Diego Barbosa, A. Basoliso, George Ramaila, Jose Sotelo, Victor Degamo, Daniel Casil, John Maile. These are the men I have seen inside the white line.

Q. Can you tell us what, if anything, the ones you mentioned did,—for instance, I think you first mentioned “Gigo,”—did you notice what he was doing during this affair? [41]

Mrs. Bouslog: It appears from the evidence that Diego Barbosa is not a defendant in this case. In the interest of time I would like to dispense with what he did, if he is not before the Court.

Mr. Crockett: If the Court please, it is part of the *res gestae*. He took part in this offense and was engaged in it and we have a right to show what happened.

The Court: Objection over-ruled.

A. Diego Barbosa was first seen hitting several men behind him and he was seen rushing into the white line where the kapu line was.

Mrs. Bouslog: I am going to object to the witness saying what was seen. He should state what he saw.

Mr. Crockett: No objection.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I saw Diego Barbosa rushing into the white line, followed by several other men and thereafter I lost him in the crowd that were mingled over there.

Q. And the other you mentioned, the rest that you mentioned, I believe it was Basiliso Arruiza?

A. I saw him inside the white line where the kapu sign was placed.

Q. What was he doing inside the white line?

A. I saw him running here and there. He had a hat on at the time. I lost him in the crowd.

Q. Now, the next man, Victor Degamo? What did you see him do? •

A. I saw Victor Degamo inside the white line. He grabbed a piece of lumber, 2x4, about seven feet long. He grabbed this lumber so I took it away from him. He agreed to that and then he got lost in the crowd.

Q. And Ramaila, how about him?

A. I saw George Ramaila inside the white line where the kapu line was placed and I lost him in the crowd. [42]

Q. I think the next one was Sotelo?

A. I saw Sotelo near Victor Degamo when he had the stick. Sotelo was nearby. I lost him also.

Q. And Casil?

A. I saw him inside the group when the men were running here and there inside the white line.

Q. And Maile?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I saw John Maile get on top of the crane from the mauka side where Sonny Fernandez was inside the crane and as soon as Sonny Fernandez got off the crane I lost sight of him.

Mr. Crockett: Shall we take a recess? It is 4:00 p.m.?

The Court: We will adjourn until tomorrow at 10:00 a.m.

Friday, August 29th, 1947

(Court convened at 10:10 a.m.)

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed. We will stipulate that all the defendants are present from my roll call of five minutes ago.

Mr. Crockett: We will so stipulate. We are ready to proceed, Court please, on direct examination of Mr. Takahama. Call Mr. Takahama.

Mrs. Bouslog: Is there any way we can have benches brought in? I would like to have all the defendants in here.

The Court: That is all the benches we have.

Mr. Crockett: Now, Mr. Takahama, you gave us some names yesterday of the persons you saw during the incident which you described. Were there any other persons that you identified while down there? That is, immediately after the incident or at any other time?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: I am going to object to the form of the question, "were there any other people you identified there or any other time"? We are interested in the alleged [43] offense which was taking place.

Mr. Crockett: Court please, if the answer is "yes" the Prosecution will connect up and show the time and place—I can't put everything in one question.

The Court: Objection over-ruled.

Q. Answer the question.

A. Right after the incident when the men were on their way back to the stone wall, I have taken down some notes to identify the persons over there and they are as follows:

Q. Well, wait a minute. You did identify some persons? A. I did.

Q. Will you give the names of these persons?

A. The names are Sam Shin, Hiroshi Oshiro.

Q. Oshiro, what is his other name?

A. "Molokai."

Q. Mariano Dugay, Vicente Saloricman.

Mrs. Bouslog: May it please the Court, I want to say at this point that Mr. Crockett said he was going to connect up his question before asking witness to give the names. He did not so connect up the question he asked nor is it clear from the testimony of the witness whether he knew these persons by sight or what the form of identification was. The

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

connecting up should be shown and these persons should be identified. He should identify these persons at the time because he saw them at the time.

Mr. Crockett: I did connect up. I asked him if this was immediately after. Anyway this is a matter for cross-examination and it is not necessary to go into detail.

(Argument on this point.)

Mrs. Bouslog: I ask the Court to require the prosecution to show that these names that are being read off are persons known to the witness whom he saw there and could [44] identify of his own knowledge at the time the incident occurred.

Mr. Crockett: I am willing to ask him the question. Did you identify them of your own knowledge. How did you identify them, Mr. Takahama?

A. Yes, I did identify these people by my own knowledge.

Q. I might suggest after we get the names of these persons. Prosecution will go into other details later.

A. Andres Velasco, Pablo Pineda, Masao Gima, Saturnino Gaspar, Kenneth Matsumoto, Mitsui Shimizu, Riyoji Shimizu, Mitsuyuki Oyama, Guilherme Alboro, Kazuyuki Hashimoto, Nobuteru Tomita, Nobuo Honda, Honorio Collado, Narcisco Sipe, Yoshio Ginoza, Frank Laborte, James Aikala, Daniel Kaopuiki, Asing Aho, Alan Nitta, Shigeyuki Matsuura, Midori Oda.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Can you recall any others?

A. I don't think I can recall any others. That's all I can remember at present.

Mrs. Bouslog: Perhaps if the prosecution would pass the complaint you would be able to recall.

Q. Now how do you happen to recognize these people or know their names?

A. I have been here four years and have become acquainted with these people as an officer. I know them by sight and where they are living.

Q. So that these people whose names you have given, whom you recognized, is from knowledge gained in the years you have been a police officer here?

A. That is right.

Mr. Crockett: May witness be excused a minute to get some exhibits?

The Court: He may.

(Witness brings in exhibits.)

Mr. Crockett: Court please, these pictures were introduced [45] in evidence as Exhibit "B" for the prosecution and pasted in the book. Did you do that?

A. Yes.

Q. The numbers are the same numbers that are on the back? These numbers are 1 to 55. Not consecutive, as some have been omitted?

A. Yes.

Q. Now Mr. Takahama, showing you the first set containing eight pictures, numbers 1, 2, 3, 4, 5, 7, 9 and 11. Will you look at these pictures one by

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

one and see if in those pictures you recognize any of the persons you have named?

Mrs. Bouslog: I object to the question. He has not yet identified the individuals, he has just testified that he pasted the pictures.

Mr. Crockett: I will withdraw it, to save time. These names that you gave us, will you stand up and look around the Courtroom and see if you can identify the persons named? We won't follow the same order in which you gave them, but will you point out Guilherme Alboro? Defendant Guilherme Alboro, will you stand up?

(Witness unwilling to arise in Courtroom.)

Mrs. Bouslog: If he puts his hand on your shoulder, stand up. The witness has testified from memory a long list of names and is calling off a list of names for purposes of identification.

(Defendant Alboro stands.)

Mr. Crockett: Okeh, we will do that. I do not agree with counsel but to save time will agree and will ask him to point out the defendants. I will do anything counsel wishes to save the time of the men. [46]

A. Sam Shin. (Points him out in Court room.)

Q. The second man there on the front porch?

A. Yes.

Q. Hiroshi Oshiro. (Witness points him out.)

Mariano Dugay.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. He is the third man sitting there without a shirt?

A. Yes. Vicente Saloricman. (Points out this defendant.)

Q. The man standing up in the back? A. Yes.

A. Andres Velasco. (Witness points him out by placing hand on defendant's shoulder.)

Q. Has he any other name? Any nickname?

A. No, just Andres Velasco. (Calls name of Pablo Pineda.)

Q. Is Pablo Pineda present?

Mr. Bouslog: If we may take a short recess I will look for the defendant.

Court recesses at 10:35 a.m. Reconvenes at 10:38 a.m.

Mrs. Bouslog: Your Honor, all defendants have been present at all times.

Mr. Crockett: We are ready to proceed.

Mr. Takahama: Saturnino Gasper. (Witness places hand on this defendant's shoulder.) Masao Gima. (Witness places hand on defendant's shoulder.)

Q. Would you tell us the bench he is sitting on?

A. He is the second man on the second bench. I am looking for Kenneth Matsumoto, but he is not here. Mitsuo Shimizu. (Points out this defendant.) He is the first one on the side bench. Here is Kenneth Matsumoto. (Points out this defendant in the same manner.)

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. The one with the dark glasses on? A. Yes.
Mrs. Bouslog: It is not a disguise, Mr. Crockett.

A. Riyoji Shimizu, sitting on the third bench.
Mitsuyuki Oyama, side bench. Guilherme Alboro,
side bench, Kazuichi Hashimoto, and Nobuteru
Tomita. (Points out these defendants.)

Q. The one there with his back to the Court?
A. Yes. [47]

A. Nobuo Honda. In the center, side bench.
(Places hand on defendant's shoulder.) Honorio
Collado. (Points out this defendant by placing hand
on shoulder.)

Q. The man sitting by the door in the checked
shirt, chewing gum?

A. Yes. Narcisso Sipe. Sitting on the number
five bench. Yoshio Ginoza. (Places hand on shoul-
der, outside on porch.) Pablo Pineda is out here.
(Identifies this defendant by placing hand on shoul-
der.)

Q. Will you ask him to come by the door?

A. Pablo Pineda (witness places hand on shoul-
der.) Frank Laborte.

Q. He is not one of the defendants.

A. The Harbor boys, James Aikala and Daniel
Kaopuiki.

Q. Court please, the records show these two
defendants are not named in the complaint. You
mentioned some persons yesterday that you saw
within the white line at about the beginning of the

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

incident. Do you recall those names that you gave us at that time?

A. The persons seen in the white line were Diego Barbosa, Basoliso Arruiza and George Ramaila.

Q. Can you point Ramaila out to the Court, please?

A. On the first bench there, George Ramaila.

Q. In the khaki shirt? A. Yes.

Q. Who else did you mention yesterday?

A. Basoliso Arruiza.

Q. I mean in addition to those you mentioned.

A. Daniel Casil.

Q. Will you point him out?

A. This is Daniel Casil. (Witness points out this defendant.) [48]

Q. The man who just stepped in the door?

A. Yes.

Q. Okeh. Do you recall the other persons you mentioned yesterday? A. John Maile.

Q. He is not included in this case is he?

A. No.

Q. And the other persons you mentioned? Do you remember any other persons you mentioned yesterday?

A. Jose Sotelo. (Points Sotelo out by placing hand on shoulder.)

Q. The man on the third bench? A. Yes.

Q. In the last list of names you mentioned Daniel Kaopuiki, Jr. Can you point him out?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: That's right, when he forgets the names, you give him the names.

Mr. Crockett: He mentioned the names. I have a right to call them.

A. He is sitting here in the white shirt. (Witness places hand on shoulder.)

Q. Coming back now to the pictures which were offered in evidence as Prosecution's Exhibit "B", referring you to pictures, numbered 1, 2, 3, 4, 5, 7, 9 and 11. I will ask you to examine that sheet and take the pictures, one by one, and state whether or not any of the persons whom you have named you are able to recognize in those pictures?

Mrs. Bouslog: May I see the pictures first before you go on? (Prosecution hands defense counsel the pictures.)

A. Number 1. Hiroshi Oshiro.

Mrs. Bouslog: Are you going to have a showing as to what time these pictures were taken? [49]

Mr. Crockett: That's been testified to by Lt. DeMello.

Mrs. Bouslog: But some of these are not pictures of the alleged incident.

Mr. Crockett: They included more, but the pictures offered in evidence are only of the alleged incident. I am showing you only the pictures which are offered in evidence at the present time. Do you mind pointing out, counting from the left the person you pointed out as Oshiro?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. Number 1. That's Oshiro, third from the left, facing the camera directly. In picture number 3, Victor Guillermo. He is the one on the extreme right, looking to right. (Defendants at this time, (some of the defendants) called attention to the fact that a witness is present in the Court. Mr. Crockett then requests that all witnesses leave the Court-room.)

A. In picture number 4, Nobuteru Tomita. He is sitting in the front row about in the center of the picture.

Mrs. Bouslog: He is on the left or right?

A. In the picture he is on the left. In number 11, Diego Barbosa and Pablo Pineda. Pablo is in front of Diego Barbosa, Barbosa in the back of Pablo. Both have arm bands on the left arms.

Q. Would you examine again picture number 2 and see if there is any person there you can identify?

A. I am sorry, the picture is not too clear.

Q. Now if you are finished with that sheet, showing you the second sheet containing pictures numbers 12 to 19. Are any of the defendants there?

A. Picture number 14. Andres Velasco on the extreme left of the picture and Narcisso Sipe. He is looking away from the camera. [50]

A. He (Sipe) is pictured about in the center next to Andres Velasco. In picture number 15, Jose Carronza is pictured in the center in the back.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: Facing the camera?

A. The party facing the camera.

Mrs. Bouslog: There are two. Is he the bare-headed one?

A. With his hair parted on the left side of his head. Picture number 19, Andres Velasco, white shirt, pictured on the left side of the picture. He is number four and Diego Barbosa, he is in front of the men gathered there.

Mrs. Bouslog: Take Andres Velasco. The description is not definite so that I could tell what one you meant.

A. On the left side of the picture, fourth man, white shirt, left arm on his hip. In the same picture Diego Barbosa is pictured in the center and in front of the men, standing with his left foot forward.

Mrs. Bouslog: Diego Barbosa is not a defendant in this case.

Mr. Crockett: Now referring to the third sheet containing pictures 20 to 27 inclusive.

A. Picture number 21, John Maile. He has a cap on his head and is facing towards right. Picture number 24, Basiliso Arruiza, white hat, standing beside Andres Velasco. Basiliso Arruiza is on the right of Andres Velasco.

Q. Now the next sheet contains pictures 29 to 38, with number 30 and number 37 out. Will you examine this and see if there is any person you can recognize?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I do not recognize any of these.

Q. Now the next, pictures numbers 39, 44, 45, 46, 47, 48, 49 and 50, will you examine those?

A. Picture number 49, Diego Barbosa on the extreme right. His right arm is up in the air. [51]

Q. Picture number 49 also shows a person in uniform, can you identify that person?

A. That's myself.

Q. In your uniform as a police officer?

A. Yes.

Q. At the time when your picture was taken do you recall approximately where you were standing, inside or outside the kapu line?

A. This was outside the kapu line, after the incident.

Q. What were they doing at this time?

A. They were getting back to the stone wall.

Q. Showing you the last sheet of this series containing pictures numbers 52 to 55 inclusive. Were any of these defendants in these pictures? Do you recognize any of them?

A. None. (Pictures passed to defense counsel who passed them to defendants for examination.)

Q. Showing you a new sheet, a part of Exhibit "D" for the prosecution, referring to the picture number 78, do you recognize any of the defendants in that picture?

Mrs. Bouslog: You called his attention to number 78?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mr. Crockett: Just number 78.

A. In number 78, Honorio Collado and Basoliso Arruiza on the extreme right with his hat on.

Q. You mentioned Jose Carronza. Could you point him out to us here in the Court room?

A. This man, standing here by the window is Jose Carronza.

Q. You also mentioned Victor Guillermo, will you point him out, please?

A. He is here with the yellow shirt, on the last bench, with the glasses on. [52]

Q. Would you examine picture number 3 again and——

Mrs. Bouslog: I object to the question, the witness has been asked twice to go through the first list of pictures, and is covering the same ground, with a little coaching from the prosecution.

Mr. Crockett: It is permissible to refresh a person's memory. The prosecution has a perfect right to again examine the subject to see if something has been overlooked.

The Court: Objection over-ruled.

Q. —Proceed.

A. Simon Hermano, fourth person from the right.

Q. Can you check and see if Simon Hermano is here in the Court room?

A. Simon Hermano, here on the second bench in the green shirt.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

(Witness leaves seat to look for the various defendants and when he finds them, places hand on shoulder of defendants.)

Q. Please take your seat. Cross examine.

Mrs. Bouslog: Your Honor, because of the difficulty of consulting with my clients when you have forty or more, and the fact that a client usually sits by you so that you can consult with the client, I would like to have a recess now to talk with them and have a little earlier lunch hour, if that is satisfactory, and reconvene at 1:00 p.m.

Mr. Crockett: Just before Court takes a recess, I would like to suggest that the witness be excused and the Court call the roll to see if the witness has identified the defendants properly.

Mrs. Bouslog: I think all witnesses are present as stipulated in the record. Your Honor, a defendant has a right to sit by his attorney and consult with his attorney regarding facts that are brought up so that——

Mr. Crockett: I have no objection to the recess. [53]

Mrs. Bouslog: I would like to have the duplicate set of the Court exhibits made available to me during the recess.

Mr. Crockett: No objection to your taking the Court exhibits.

The Court: If there is no objection we will take a recess until 1:30 p.m.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: How many witnesses do you have this afternoon. This is the sixth, I believe?

Mr. Crockett: I think I have about ten.

Mrs. Bouslog: But Mr. DeMello has not been cross-examined. Is he available today?

A. No, but he might be here. We are ready to proceed with about three witnesses. They are standing by.

Mrs. Bouslog: I want to go ahead until we finish. I would like to reconvene as soon as possible as I have work in Honolulu. I am sorry about the necessity for the recess at this time, but do not see how I can cross examine without having talked to my clients.

Court recessed at 11:20 a.m. Mrs. Bouslog takes Prosecution's Exhibits "B", "C", "D" and "E" for study during recess. Court reconvened at 1:30 p.m. Counsel for defendants returns exhibits.

Mrs. Bouslog: Could you make the map available to me for cross-examination?

Mr. Crockett: Certainly.

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed, Your Honor.

Mr. Crockett: We are ready to proceed, Your Honor.

The Court: Please have that defendant face the Court, the one with his back to the Court. [54]

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Cross Examination

Mrs. Bouslog: How old are you? A. 29.

Q. How long have you lived on Lanai?

A. I've been an officer for four years.

Q. How long have you lived on Lanai?

A. Fifteen years.

Q. In other words, you came to Lanai when you were fourteen years old? A. No.

Q. How old were you when you came to Lanai?

A. I have no idea.

Q. How long have you lived on the Island here?

A. About fifteen years.

Q. How old are you now? A. 29.

Q. Then you must have been fourteen when you came to Lanai?

A. I have been on other islands.

Q. When you first came you were fourteen?

A. That I don't know.

Q. Have you had a home or residence any place other than Lanai since you were fifteen?

A. Yes.

Q. Where else have you lived?

A. Honolulu.

Q. For how long?

A. About four years.

Q. Since you were fifteen how many years were you not living on Lanai?

A. That I don't know.

Q. Your Honor, I ask that you instruct the wit-

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

ness to assemble his remarkable memory and find out where he has lived since he was fifteen years old. [55]

The Court: Counsel did not ask that question.

Mr. Crockett: Not in those terms.

Mrs. Bouslog: Will you state the first time you came to Lanai—how old were you when you first came to Lanai?

A. I really do not know. I must have been about eight or nine years.

Q. Did you go to school on Lanai?

A. Yes.

Q. What grades.

A. First to ninth grades.

Q. Did you go to high school here?

A. Not on this island.

Q. Where did you go to high school?

A. Honolulu.

Q. When did you come back to Lanai? After you graduated from high school in Honolulu? What year. A. 1937.

Q. And you have lived on Lanai since 1937?

A. Off and on.

Q. How much "off" and how much "on"?

A. I did not keep track of the date.

Q. You seem to have a good memory, almost a photographic memory for other things, it is strange you can't tell where you lived. You returned to Lanai in 1937? Where did you live in 1937?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. Lanai.

Q. 1938?

A. I could have been on Lanai, I moved out and came back again.

Q. I am asking you what you did.

A. I do not know that far. [56]

Q. That's only ten years ago, you were nineteen then?

A. I'm sorry, I do not know that.

Q. You have been on the Lanai police force for the last four years? What were you doing before that?

A. Wailuku police force.

Q. How long did you work for them?

A. About two years.

Q. During that time you lived in Wailuku, Maui?

A. That's right.

Q. What did you do before that? Where did you work before that?

A. Lanai.

Q. What did you do on Lanai?

A. Okamoto Store.

Q. What store?

A. Okamoto Store.

Q. During the times you recall being on Lanai did you know any of the defendants whose names you mentioned this morning?

A. Yes, I do, since I was working here four years.

Q. Did you know any of them before? Prior to the last four years?

A. Yes, I did.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. How many of the defendants did you positively identify this morning as being present at the Harbor on July 14th? A. About 33.

Q. Will you name them please?

A. Pardon.

Q. Will you name them, please? [57]

A. Diego Barbosa, Basoliso Arruiza, George Ramaila, Jose Sotelo, Victor Degamo, John Maile, Daniel Casil, Sam Shin, Hiroshi Oshiro, Andres Velasco, Vicente Saloricman, Mariano Dugay, Masao Gima, Pablo Pineda, Saturnino Gaspar, Kenneth Matsumoto, Itsuo Shimizu, Riyoji Shimizu, Honorio Collado, Mitsuyuki Oyama, Guilherme Alboro, Kazukuki Hashimoto, Nobuo Honda, Nobuteru Tomita, Yoshio Ginoza, Narcisso Sipe, James Aikala, Daniel Kaopuiki, Jr., Franke Laborte, Asing Aho, Shigeyuki Matsuura, Alan Nitta, Midori Oda.

Q. That's all you can recall having mentioned this morning?

A. That's all I can recall.

Q. How many of these defendants whom you have just named, those who are defendants, have you known for over ten years?

A. That I do not know.

Q. How long have you known George Ramaila?

A. Over four years.

Q. How long have you known Jose Sotelo?

A. About four years.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. How long have you known Daniel Casil?

A. About four years.

Q. How long have you known Sam Shin?

A. About four years.

Q. How long have you known Hiroshi Oshiro?

A. About four years.

Q. How long have you known Mariano Dugay?

A. About one year. [58]

Q. How long have you known Vicente Saloricman?
A. About four years.

Q. How long have you known Andres Velasco?

A. About four years.

Q. How long have you known Pablo Pineda?

A. About four years.

Q. How long have you known Masao Gima?

A. About one year.

Q. How long have you known Saturnino Gaspar?
A. About one year.Q. How long have you known Kenneth Matsumoto?
A. About one year.

Q. How long have you known Itsuo Shimizu?

A. About four years.

Q. How long have you known Riyoji Shimizu?

A. About four years.

Q. How long have you known Mitsuyuki Oyama?

A. About four years.

Q. How long have you known Guilherme Alboro?

A. About one year.

Q. And Nobuteru Tomita?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. About four years.

Q. And Nobuo Honda?

A. About four years.

Q. Honorio Collado?

A. About one year.

Q. Narcisso Sipe? A. About four years.

Q. Yoshio Ginoza? A. About one year.

Q. Daniel Kaopuiki?

A. About four years. [59]

Q. Victor Guillermo.

A. About four years.

Q. Simon Hermano?

A. About one year.

Q. Jose Carronza? A. About one year.

Q. You have just testified that you have not known any of these defendants more than four years.

Mr. Crockett: I object. He did not testify that, he said, "about four years."

Q. Among these defendants the ones you have known longest is about four years?

A. About four years.

Q. You went to school from first to ninth grades, were any of these defendants in school with you? Do you remember them from school?

A. Well, they were not in my same class, I know that.

Q. Do you remember their names and faces?

A. Faces, maybe.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Well then, so you have known some of them a great deal longer than four years?

A. Well, that's right.

Q. Are any of these people neighbors of yours?

A. I do not find any of these in my block.

Q. You understand the nature and meaning of an oath and that if you state positively that something is true to the best of your knowledge and your observation that you can be punished for perjury for false statements proven false?

A. That's right.

Q. You have testified that you could positively identify as having been present at the Harbor at the time when this alleged incident occurred—and you are positive, [60] and you state, knowing you are under oath, you are positive all these people were present?

A. That's right.

Q. You saw them there? A. That's right.

Q. How many people you have identified belong to the union?

A. That I do not know.

Q. Will you name the people you knew were present who did not belong to the union?

Mr. Crockett: Just a minute—does counsel mean from the list or other people there at the time?

Q. Other people who were there at the time.

Mr. Crockett: How can the witness tell who belongs——

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Withdrew the question. Will you state the names of all people who were present apart from the ones named, police officers, company people, any other individuals you saw present.

A. Asst. Chief Freitas, Capt. Seabury, Lt. DeMello, Lt. Medeiros, Officer Murayama, Heminger, Mrs. Heminger, Anthony Fernandez, Harrington, Johnson, Pavao, Hector Munro, Buck Manriki, that's about all I can recall now.

Q. What time did you go down to the Harbor? On July 14th?

A. I was down there at about 3:30 p.m.

Q. You mean you arrived down there at 3:30?

A. Yes.

Q. Were you down at the Harbor in the morning? A. Yes, I was.

Q. Will you state the hours you were down there in the morning?

A. It was about 9:30 to 10 in the morning. [61]

Q. Were you accompanied by anyone when you went down in the morning?

A. Capt. Seabury and Lt. DeMello.

Q. Did you see anyone taking pictures at any time? A. No, I do not recall it.

Q. Did Lt. DeMello have a camera with him?

A. I do not recall.

Q. You do not recall seeing him take any pictures? Were you with Lt. DeMello?

A. I was with him.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. You do not recall if he took pictures?

A. I do not recall.

Q. How many people were down there when you went down there in the morning?

A. The Harbor boys were down there in a small circle.

Q. About how many?

A. About ten people.

Q. Who else was down there?

A. About ten of the Harbor boys were down there on the picket line.

Q. Were any of the company employees down there?

A. That I don't know.

Q. That is, supervisors?

A. I don't recall.

Q. Then your best recollection is that when you went down there in the morning between 9:30 and 10:00, there were about ten people on the picket line, and no company representatives to your recollection and yourself, DeMello and Seabury?

A. That's the approximate time.

Q. You went down there in the afternoon at 3:30? [62]

A. Yes.

Q. What time did you leave?

A. We left about 5—5:15.

Q. When you arrived down at the Harbor who were you with?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I just mentioned Asst. Chief Freitas, Capt. Seabury, Lt. DeMello, Lt. Medeiros, Officer Murayama, and myself.

Q. You came down in a car with them?

A. Yes.

Q. Did any of them have a camera?

A. DeMello.

Q. Was his the only camera? A. Yes.

Q. How many people were down there when you arrived at 3:30—that is, how many pickets were there?

A. That I do not know.

Q. Will you give me your best estimate?

A. About ten people.

Q. Then you say some more people arrived shortly after you arrived there? How long after you arrived?

A. Fifteen minutes after we arrived there.

Q. That would be about 3:45? Then how many more came up?

A. I counted 120 at the time, there were some other men in the northern section of the Harbor. I did not count them, but about 150 men gathered there.

Q. When you came down to the harbor at 3:30, what ships or boats were in the Harbor?

A. Mana.

Q. What was happening in relation to the Mana?

A. Unloading its freight.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. That was about 3:30? [63]

A. About that time.

Q. How long did it take the Mana to unload?

A. Say about fifteen minutes.

Q. Then the Mana, when you came down at 3:30 was the only boat?

A. That's all I think I seen.

Q. Were there any barges there when you arrived?

A. The barge came after the Mana left the dock.

Q. There was just one barge came in after the Mana left the dock? What time do you estimate the barge docked?

A. About 4:15.

Q. What time would you say the alleged incident of the boys crossing the kapu line began?

A. About 4:30 p.m.

Q. How quickly was it over?

A. In approximately about three minutes.

Q. Did you see any people, any pickets, come down after the incident was over?

A. I cannot recall.

Q. Any new pickets arrive? You could not say they did not arrive?

A. The men were walking here and there, coming down and going up, there were several cars there at the time.

Q. At any rate, you would not be able to swear whether two or three additional car loads arrived?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. No.

Q. Will you point out on this map where you were standing at the time. (Hands map to witness, who described place where he was standing.) [64]

Q. Your car was parked outside the kapu line?

A. Yes.

Q. Where were you standing when the alleged incident occurred?

A. I was standing there. (Points to map.)

Q. What did you do?

A. As soon as the men rushed into the line, I tried to prevent them from coming. Several men, Diego Barbosa and other men went in so I followed in——

Q. Will you show where you were, how far over here did you go?

A. Sonny Fernandez was on the crane, about there—(points on map) I went as far as the crane.

Q. Okeh, did you go down into the wharf?

A. Yes.

Q. Did you come up this way?

A. Yes, I was going back and forth. (Points to map, discusses position on map.)

Q. There were about eight bins over there?

A. About eight, yes.

Q. So that you would not be able to observe what was going on, on the other side while watching Fernandez?

A. That's right.

Q. While you were over here (points to map)

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

did you notice whether or not there were still a group of people along the sea wall who had not crossed the kapu line? A. That's right.

Q. Now, you have named about 33 people? Whom you have testified positively were down at the wharf? A. Yes. [65]

Q. Can you positively, and without any reservation, swear that all of these people were involved in the incident that happened?

Mr. Crockett: I object. He is merely testifying as to what he saw, why should he swear? (Argument.)

Mrs. Bouslog: I will withdraw the question. Can you positively identify all the individuals whom you mentioned this morning as being inside the kapu line at the time the alleged incident occurred?

A. The ones that I saw inside the kapu line at the time of the incident were Diego Barbosa, Basoliso Arruiza, George Ramaila, Jose Sotelo, Victor Degamo, Daniel Casil, John Maile.

Q. Will you state exactly what you saw George Ramaila doing inside the kapu line?

A. I saw George Ramaila when a group of men were walking back to the stone wall where they were before, I saw him walking with some of the men towards the stone wall.

Q. I don't understand.

A. There was a kapu line there. After the incident, the men were going back and I saw Ramaila walking outside from the kapu line.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Is that all you saw him do? What did you see Jose Sotelo doing inside the kapu line?

A. I saw him inside the line with Victor Degamo, running around.

Q. But you did not see him doing anything.

A. I saw him running.

Q. How about Daniel Casil, what did you see him do?

A. He was inside the group, he was running around. [66]

Q. What do you mean by running around?

A. Well, walking around and running both.

Q. Now you say that the incident was all over in about, somewhere around 4:35?

A. That's right.

Q. Up until after 4:35 approximately had you made any list of names of people down there? Before the incident happened? A. No.

Q. Did you recognize any people apart from the ones you just mentioned before that time?

A. No.

Q. After the incident was pau did you make a list of names of people that you recognized as being down there? A. I made a list.

Q. You used that list to refresh your memory to testify today? A. Yes.

Q. You put on that list only the names of people you personally know by name and sight?

A. That's right.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Have you added to that list in any way since?

A. No.

Q. You are positive you saw everyone whose name was on that list down there that day?

A. That's right.

Q. Are you positive you saw Pablo Pineda?

A. That's right.

Q. Are you positive you saw Andres Velasco?

A. That's right.

Q. But this is after the incident happened?

A. After.

Q. Are you positive you saw Itsuo Shimizu?

A. That's right. [67]

Q. Are you positive you saw Honorio Collado?

A. That's right.

Q. Are you positive you saw Riyoji Shimizu?

A. That's right.

Q. Are you positive you saw Yoshio Ginoza?

A. Right.

Q. But this list of yours from which you testified was made after the incident was over?

A. That's right.

Q. You could not have all these people under observation while the incident was going on? You did not know what they were doing?

A. I knew what some of the people there were doing.

Q. You could not identify them other than the five or so who crossed the kapu line? Apart from

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

the people who you already said you saw inside the kapu line, you could not positively identify the others? You do not know what they were doing when the incident was going on?

A. That's right.

Q. You say you have been a police officer on Lanai for the last four years? Who was your supervisor on July 14th, your immediate superior?

Mr. Crockett: The question is indefinite.

Mrs. Bouslog: Your immediate superior on July 14th? A. I don't know.

Q. Who was in charge of the police station for Lanai on July 14th? A. Asst. Chief Freitas.

Q. Who was in charge on Lanai.

A. He is from Wailuku.

Q. Who was the ranking officer permanently stationed on Lanai as of July 14th?

A. Lt. Medeiros.

Q. Were you subject to his orders and direction at that time? [68] A. That's right.

Q. Is Lt. Medeiros still in charge of the station here? A. Not any more.

Q. When did he cease being supervisor, when did he leave? A. He left last week.

Q. Do you remember the date?

A. I don't know.

Q. Do you know a person by the name of Henry Aki? A. I know him.

Q. Did you see him down there on that day?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I have seen him.

Q. Did you see him at the Harbor on July 14th?

A. I saw him down there.

Q. Do you know whether or not he was charged as a defendant in this case? A. I don't know.

Q. Did you ever have any conversation in the station here in regard to his being charged?

A. That's right.

Q. You did have a conversation with him about the fact he had been charged? Is that correct?

A. I don't know anything about his being charged.

Q. Did you have any conversation with him about his being at the Harbor and being made a defendant in this case? A. I did.

Q. Where did that conversation take place?

A. Down the Harbor.

Q. Did you ever talk with him in the Police Station? A. I did not.

Q. Will you tell about that conversation?

Mr. Crockett: I object. He is not a defendant. It is incompetent, immaterial and irrelevant. Can counsel show where it has any bearing? [69]

Mrs. Bouslog: I am testing the credibility of the witness.

Mr. Crockett: That's going pretty far. I do not see where it makes any difference when the man is not charged, it has no bearing in the case and we should try to save the time of the defendants here. But I will withdraw my objection.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: Will you state the conversation you had with Mr. Aki at the Harbor?

A. May I ask what date this was?

Q. Tell what you remember about the conversation. A. I just served him a warrant.

Q. I thought you stated you did not know whether he had been charged?

A. That I don't know.

Q. Well, this is the warrant—(shows it to Court). You knew a complaint had been filed against Henry Aki as a defendant? After you served the warrant did you ever talk to him about the fact he was charged?

A. Just served the warrant.

Q. Do you know whether or not the case against Mr. Aki was dropped?

Mr. Crockett: The record will show no charge was entered against Mr. Aki.

The Court: The record shows it was dismissed.

Q. Do you know why it was dismissed, even though he was present at the Harbor?

A. I have no idea.

Q. You know he was present and the complaint dismissed against him? Mr. Aki was not there operating a crane or assisting the company representatives in any way, was he?

A. I have no idea. [70]

Q. Do you know whether the charges were dropped against any of the other defendants on

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

whom you served complaints? A. I have no idea.

Q. Now, you have testified regarding the identification of certain individuals in the pictures in the exhibits that have been filed in the Court. Will you look at the Court Exhibit number 1 and state the time the picture was taken?

Mr. Crockett: I object. It is not necessary as it has already been testified to by other persons.

Mrs. Bouslog: I want the witness to state, as of his own knowledge whether it was after the incident.

Mr. Crockett: I withdraw the objection.

A. Picture No. 1. I have no idea when it was taken.

Q. So far as you know it could have been taken any other day than the 14th? The same day, or after the incident happened—in the morning or any time? A. Yes.

Q. Will you look at the picture and see if there is an incident——

Mr. Crockett: I object. He has said he does not know.

Q. I am asking him if he can, of his own knowledge, identify that as a riot scene. I will withdraw the question. The picture speaks for itself. It is not exactly a riot scene.

Court: We will take a short recess.

Court recessed at 2:45 p.m. Reconvened at 3:05 p.m.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Will you look at picture number 4. Will you state, from looking at the picture whether it shows a scene of so-called riot?

A. I have no idea.

Q. I ask the Court to instruct the witness to answer yes or no. [71]

Mr. Crockett: I object.

Mrs. Bouslog: Withdraw the objection. Your answer is you have no idea. Can you tell from looking at the picture when it was taken.

A. I have no idea.

Q. Will you look at picture number 14. Can you tell from looking at that picture whether it represents a scene from a so-called riot?

A. I have no idea.

Q. Can you tell from looking at the picture when it was taken? A. I have no idea.

Q. Will you look at picture number 15, would your answer be the same to both those questions that you have no idea when they were taken or what they represent? A. That's it.

Q. The same is true of pictures 20 and 24?

A. I have no idea on both of those pictures as to when it was taken or whether it is the scene of the incident.

Q. That's all.

Mr. Crockett: No further examination. Call Mr. Johnson.

Exhibit K—(Continued)

FRED SPENCER JOHNSON

being first duly sworn, testifies as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Fred Spencer Johnson.

Q. Where do you reside?

A. Lanai City, Lanai.

Q. Mr. Johnson, the Court has provided an interpreter and it is desired that the questions be interpreted to the defendants. Please hesitate before you give me your answer and then the answer will be interpreted. What is your occupation? [72]

A. I am an assistant superintendent of the Hawaiian Pineapple Company.

Q. On July 14th of this year in the afternoon about three or after were you down at Kaumalapau Harbor?

A. I was.

Q. What was the occasion of your being there?

A. We were attempting to load some bins of pineapple on the barge going to Honolulu.

Q. About what time did you arrive at the wharf there?

A. I would estimate about a quarter of four.

Q. You recall a barge coming in that afternoon about that time?

A. Yes, I do.

Q. After the barge arrived and was tied up to the wharf, as the evidence shows it did, what did you do?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. I attempted to hook the bins on the spreader attached to the crane to the pineapple bins so it could be swung on the barge.

Q. Whereabouts were you doing this work? What portion of the wharf?

A. I was on top of eleven bins which were stacked along the tables where the trucks are unloaded.

Q. Was anybody working there with you?

A. Yes.

Q. Who was that other person?

A. Two people, Harrington and Marquez, on the second tier of bins and Kluge was standing down on the table.

Q. What happened when you people started to hook these bins on the spreader?

A. A large number of men who were sitting around on the sea wall and on the rail on the Mana landing made a rush for the bins where we were working and climbed up on the bins.

Q. Tell us what happened. [73]

A. The first man who got on top of the bins tackled Mr. Harrington and knocked him down.

Q. Did you recognize who that man was?

A. Diego Barbosa.

Q. What happened after that?

A. Another man whom I do not know tried to push Mr. Marquez off the bins. I gave him a shove away from Mr. Marquez. Then I was pushed down

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

into the next layer of bins myself. Then from that bin I jumped off on to the first table, then back of a truck across on the opposite table, down on the wharf, across the barge and jumped on the tug.

Q. Then what happened after that?

A. As soon as I jumped down on the tug several men ran across to the barge and one of them threw a pineapple at me. Fortunately his aim was poor and he missed.

Q. This person who threw the pineapple at you, were you able to recognize him?

A. Yes.

Q. Who was he, what is his name?

A. I believe his name is Sotero Unciana, No. 8498.

Q. Could you pick him out in the Court room here?

A. This is the man here. (Points to defendant Unciano.)

Q. The man sitting down there in the green shirt?

A. Yes.

Q. Are you able at the present time to point out any other persons whom you saw down there during that time, Mr. Johnson?

A. Just what time do you mean, sir—from the time we were rushed at the bins, or when?

Q. At any time during the period of the rush, or immediately after the rush. [74]

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. I can point out quite a few people, but I am not familiar with their names.

Mrs. Bouslog: I am going to object. If the witness will describe the individual? The Court room is too crowded to permit all the defendants to get into the room.

Mr. Crockett: I just want him to point out that particular person and identify him in some way.

Mrs. Bouslog: I will stipulate we will have no objection to that if you will go out and get an equal number of people here so that there will be some chance of his misfiring on some of the defendants.

Mr. Crockett: I object. The witness has a perfect right to point out——

Mrs. Bouslog: Not without giving some kind of description.

Mr. Crockett. Give him a chance and he will. He will give us a description when he points out the man.

Mrs. Bouslog: I object.

The Court: Objection over-ruled.

Mrs. Bouslog: Your Honor, every objection I make is over-ruled. This is a constitutional right. (Further argument.) Please reconsider the ruling.

The Court: The witness is not asked to point out all——

Mrs. Bouslog: That makes no difference. I am shocked that Mr. Crockett would follow such a procedure. Your Honor must know the defendants

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

have a right not to incriminate themselves. (Argument.) There should be some test to check his observation. Just to say, "point out one that you saw" is not a good test for the witness.

The Court: The witness does not even know them by name.

Mr. Crockett: We will withdraw the question. It is all right. We do not want to hold up the proceedings. We [75] withdraw the question to save time. Cross examine.

Cross Examination

Mrs. Bouslog: Is it your job as an Assistant Superintendent, Mr. Johnson, to load pineapple bins?

A. In an emergency, yes.

Q. You consider a lockout an emergency?

A. Would you define a lockout?

Q. How long have you been an assistant superintendent for Hawaiian Pineapple Company?

A. Since April 1st.

Q. Of this year? A. Of 1947.

Q. How many bins would you say were there to be loaded on the barge?

A. I believe there was 11 in the pile and one on the truck.

Q. When were the pineapples in the bins picked, do you know?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. One bin had been picked that day. I do not know exactly what date the other bins had been picked. There were several there that had been picked the last day before the work stoppage started and I believe three bins other than the ones which were picked that day had been picked during the work stoppage.

Q. Do you know the capacity of the barge, how many bins a pineapple barge will carry?

A. At the present time we are putting 153 bins on these barges.

Q. Are you an expert in the pineapple industry to the extent you can tell me as to how long it is of any value for purposes of canning?

A. Due to the by-products at the Cannery—such as citric acid—they are recoverable until the fruit is completely rotted. [76]

Q. My question was directed for canning. Strike the question. Ordinarily how quickly is pineapple shipped after it is picked?

A. Under ideal conditions we hope to have pineapples in cans within 48 hours but occasionally it will be left on Lanai five or six days.

Q. There were only 11 bins to be loaded on this barge that carries 153? What is your best recollection?

A. Twelve—11 on the pile and one on the truck.

Q. You say Mr. Harrington, Mr. Marquez and yourself were over on the bin, or on the—where were you standing at the time?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. We were standing on the top layer of the bins.

Q. What time did you say the barge came in?

A. I did not say.

Q. What time do you recall?

A. Sometime shortly after four. I cannot give you an accurate time.

Q. Did you sustain any injuries? A. No.

Q. Would you describe your state of mind as "terrified"? A. I do not know.

Q. That's all.

Mr. Crockett: What was your state of mind when this was happening?

A. My first reaction was surprise, second reaction was getting out of the way of overwhelming odds.

Q. So that instead of being terrified you might have been apprehensive? A. Yes.

Mrs. Bouslog: What do you mean by apprehensive? [77] What's your idea of the difference between terror and apprehension? What does the witness mean after the Prosecution coaches him as to what he meant?

A. I experienced terror during the war quite a few times when there was no question in my mind that I would either be dead or——

Q. So that's what terror means to you?

A. Yes.

Q. And apprehension? Can you be apprehensive

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

if it is going to rain and you don't want it to?

A. That's not my connotation of the word.

Q. Perhaps if you will substitute your own words instead of the Prosecution's?

A. Well, if you are standing in the middle of a road and a car is coming you are apprehensive of being hit and you get out of the way.

Q. But you would not say you were terrified or feared for your life?

A. No, I do not believe I would say that.

Mr. Crockett: Did you fear for your personal safety,—your limbs? A. Definitely.

Q. That's all.

JEROME FRANCIS HARRINGTON

being first duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Jerome Francis Harrington.

Q. What is your occupation?

A. Research assistant. [78]

Q. Now Mr. Harrington, as I question you will you pause before you give me your answer so as to allow the interpreter to interpret my questions

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

to the defendants. She will also interpret your answer. A. Yes, sir.

Q. Mr. Harrington, were you the one that was at Kaumalapau wharf on the 14th day of August, 1947, assisting with the loading of the pineapples after the barge came in? A. I was.

Mrs. Bouslog: May I suggest the Prosecution testify?

Mr. Crockett: It is perfectly correct to tie up the witness without asking so many introductory questions.

Mrs. Bouslog: I withdraw the objection.

Q. Just where were you working there, Mr. Harrington?

A. I was on top of the bins attempting to hook on the chains.

Q. Do you know Mr. Johnson? A. I do.

Q. And you know Mr. Marquez? A. Yes.

Q. And Sonny Fernandez? A. Yes.

Q. Who was assisting you in the work that you were doing?

A. Johnson was directly opposite me and Charles Marquez was behind me.

Q. Now, as you were about to proceed with the work, what, if anything, happened?

A. As the spreader was swung over the bin we were just leaning down to hook the chains through the rings when this large group of men who were down along the sea wall started in rioting, yelling.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

They came running down towards [79] us and started to climb up on to the bins. As they were running down toward us one man was climbing up the bins directly in front of me. About this time someone tackled me from behind. Two or three men then came running around, swarmed around me, attempting to push or throw me over the side of the bins. I grabbed a couple of them as they were attempting to push me around. I was thrown down on the pineapple. As many as five or six of them apparently piled on top of me and I could not get up. They started in to beat me about the face and body with their fists and with pineapples. I covered up as best I could by putting my hands up over my head and pulling my knees up. Someone was attempting to hit me in the groin and I saw Gigo was trying to strike a blow. He had his arm raised and as it came up I warded it off with my leg. Then I pushed him away with my foot. He was down below my legs, down by my knees. I also saw Pablo hitting me about the body. This went on for some time and then it suddenly stopped. I heard Bilson say, "You can get up now, they have gone," or words to that effect. I then got up and saw Bilson on the opposite edge of the bin with his camera in his hand.

Q. Now you mentioned—you say you saw Gigo—do you know his name?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. That's a nickname. I believe Diego Barbosa is his name.

Q. And Pablo?

A. I believe his name is Pablo Pineda.

Q. Can you point him out to me?

A. Here is the man. (Points out Pablo Pineda.)

Q. The man who just appeared in the door with the brown shirt? A. Yes. [80]

Q. Were you able to identify any other person during that incident?

A. I remember seeing a fellow called Sumagit.

Q. Can you point him out to us?

A. (Witness looks around and finds defendant Sumagit and points him out to the Court.)

Q. This fellow in the apricot colored shirt?

A. Yes.

Q. And at the time you say you were pushed down off your feet on the pineapples, about how many persons were there? I am not speaking of Johnson and Marquez, but how many of these persons were present at the time? I am referring to up on top of the bins.

A. I would say about ten to fifteen that were moving around, came up over and came on towards the barge.

Q. We have a series of pictures here which have been admitted in evidence as Prosecution's Exhibit "B". I will ask you to look at the first page here and to state whether or not any of the scenes shown

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

on this page represent anything in the incident which occurred to you. If possible, tell us the number of the picture.

A. Picture number 11 shows Gigo and Pablo underneath where I am.

Q. That's picture number 11? A. Yes.

Q. Showing you the second page, pictures 12-19. Do any of those show the scenes in which you are involved? A. No, I am not in those.

Q. Showing you a page from Prosecution's Exhibit "C" numbers 57-62. I will ask you whether or not any of [81] those pictures have any relation to the incident as related to you?

A. Picture number 57 shows the start of the riot where the men are just climbing or starting to climb up the bins, rather, and in picture number 58 I am in the right-hand corner of the bins there.

Mrs. Bouslog: Will you show me where you are in the picture?

A. I am not visible in the picture taken in the bins. A man is on top.

Mrs. Bouslog: Is there any in which you are visible? A. I don't believe there are.

Mr. Crockett: And also pictures from 63-67, are they about the same?

A. That is essentially the same thing—all during the period while I was up on top of the bins.

Q. At the time when this rush was made, or break was made, by these persons, was there any noise or yelling as they approached the bins?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. Yes, they were yelling and waving their arms. When Gigo was beating me he was saying something in Filipino that sounded like "Allah."

Q. What was the reaction upon you mentally, when you heard these people making noise, when you saw them rushing toward the bins. What was your mental reaction?

A. I wasn't sure what they were about to do, at first. They came running down from after being so very quiet that I was startled. I don't recall any special mental reaction up to the point when someone hit me from behind and then there was confusion.

Q. Were you able to identify the person who hit you from behind?

A. No, I did not see who it was. [82]

Q. Cross-examine.

Cross-Examination

By Mrs. Bouslog:

Q. Is it your job as research assistant to fasten or to load pineapple bins?

A. It is my job as a salaried employee to do whatever job there is to be done.

Q. Who instructed you to load pineapples?

A. No one. No one instructed me.

Q. You were not ordered? A. No.

Q. Not told to go down?

A. No, I wasn't told.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. How did it happen you went down at that particular time? When did you first know there was going to be pineapples loaded or that a barge was arriving? A. I don't recall who told me.

Q. When did you first decide to go down to help load the pineapple barge?

A. I don't recall exactly.

Q. What time did you go down there?

A. Between approximately 3:30 and 4. I don't recall the exact time.

Q. Have you ever, on any other occasion, helped load the pineapple barge? A. No.

Q. First experience? A. Yes.

Q. Do you know whether or not barges are consistently loaded with only 11 or 12 bins?

A. Not customarily, only under unusual circumstances. [83]

Q. Would you describe what you saw the person you identified as Sumagit doing on that occasion?

A. He is standing on top of the bins.

Q. He was close to you? A. Not too close.

Q. He did not strike or touch you?

A. Not that I know of.

Q. What time did you leave the Harbor?

A. Approximately between 5:30 and 6.

Q. How many people were there when you left?

A. There were 20 or 30 pickets and 6 or 8 police officers.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. How many police officers were present at the time when you arrived?

A. There was Asst. Chief Freitas, Detective Seabury, another Maui police officer, a plain clothes man from Maui, Lt. Medeiros, Officer Takahama, Officer Oyama. It seems there were one or two more, I cannot recall exactly.

Q. What time did the barge tie up?

A. About 4:15 as nearly as I can remember.

Q. What was going on at the Harbor when you arrived?

A. All the men were sitting along the wall, talking, no activity.

Q. I mean at the Harbor. Was there any activity going on besides pickets sitting on the wall?

A. What do you mean by that?

Q. What else was happening?

A. Nothing else going on, nothing down there.

Q. And how many company employees were there when you arrived? [84] That is, non-strikers.

A. Eight to ten, I imagine.

Q. Can you name them?

A. Manuel Pavao, Sonny Fernandez, Johnson, Marquez, Kluge, Bilson, Buck Manriki. That's all I can think of at the moment.

Q. These people who were there when you got down there, what were they doing?

A. Standing around.

Q. Was the Mana in port at any time when you were there?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. I believe the Mana was in port.

Q. You got down there at 3:30?

A. I do not know exactly,—approximately.

Q. You don't know if the Mana was there or what was happening in regard to the Mana?

A. I don't remember.

Q. Is six-day old pineapple good for canning?

A. This pineapple appeared like it would be all right for canning.

Q. What is the usual time in which it is canned after it is picked?

A. It varies on different occasions. Sometimes as long as three days, maybe longer.

Q. But you are a member of the Research Department. What's the most desirable time?

A. As quickly as possible.

Q. Would you say it is usual for the pineapple company to send a barge to Honolulu with only eleven bins on it?

A. I do not believe it is the normal practice.

Q. Have you ever known of any other occasion? Any other occasion on which a barge has come in and been sent out with as few as eleven bins? [85]

A. Not to my knowledge.

Q. You say you stayed there until around six o'clock. About how many pickets were there.

A. Approximately twenty.

Q. Were there still police officers there?

A. Yes.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. Barge there? A. Barge left.

Q. What time did the barge leave?

A. I don't recall the exact time.

Q. Before you left? A. Before.

Q. Were the police officers still there at the time the barge left? A. They were.

Q. Everything was peaceful?

A. Men were still milling around. No rioting.

Q. During all the time the so-called riot happened, you could not see anything that was going on? You were blinded? A. I did not say that.

Q. But you could not see anything except what was going on in the bin?

A. When *were* were wrestling around, before being thrown in the pineapples, I could see.

Q. What did you see? Were there still a group of people sitting on the wall?

A. I did not observe anyone still on the wall.

Q. You did not observe, but you could not say they were not? After everything had become peaceful and quiet did you notice if any more people arrived?

A. I do not recall observing anyone else arriving after the riot stopped. [86]

Q. Where were you after things had become peaceful, where were you standing?

A. The police told us to come off the barge and keep away as much as possible. Then we came back on the wharf and then the barge left.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. Did you at any time during the course of the so-called riot hear any of the police officers read the riot act? A. No.

Q. Did you hear any of them giving orders to the crowd to disperse? A. No.

Q. Would you describe or say you were in a state of terror while these happenings were going on? A. What is your definition of terror?

Q. I asked whether you would describe your condition as terror, or would you describe your state of mind——

Mr. Crockett: The witness has asked counsel the meaning of terror. There are all kinds of definitions.

Mrs. Bouslog: Your Honor, I made the same argument before Judge Wirtz over on Maui and Mr. Crockett said the word “terror” is clear,—striking terror into the people.

(Argument between counsel.)

Mr. Crockett: I am speaking on behalf of the witness. He just wants a definition.

Mrs. Bouslog: Are you aware of the charge against these defendants, that for throwing a few pineapples and for the pleasure of punching you, they are charged with a felony, the felony of riot. (Defense counsel explains terror and quotes from statute.) Does that sound like your state of mind at the time this was going on? A. Yes.

Q. No further questions. [87]

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Mr. Crockett: Just one other question. When the persons were striking and beating you did you suffer injuries? A. Yes.

Q. Describe what injuries.

A. Bumps on my head. I thought I had a broken rib, but the X-ray revealed it was not broken. The doctor said the cartilage was torn. There were bruises on my body.

Q. That's all.

Mrs. Bouslog: Did you say you shoved and pushed at other people? A. I said I grabbed.

Q. You grabbed hold of two? Do you think you inflicted any injuries on them?

A. I grabbed them to keep from being thrown over the side.

Q. Yes, but you weren't thrown over the side?

A. No.

Q. Even later you were not thrown over the side. A. No, because they were on top of me.

Q. And you were on top of the pineapples?

A. Yes.

Q. That's all.

Mr. Crockett: That's all.

The Court: We will adjourn until 9:00 a.m. tomorrow. [88]

Saturday, August 30th, 1947.

Court convened at 9:08 a.m.

The Court: Are you ready to proceed?

Exhibit K—(Continued)

Mrs. Bouslog: We are ready to proceed for the defendants.

Mr. Crockett: I would like to have the Court call the defendants to make sure that they are all present as we have witnesses who are to identify them, and I think the Prosecution is entitled to see who these defendants are.

The Court: We will have a roll call.

Mrs. Bouslog: All the defendants were here at a roll call five minutes ago, I believe.

Mr. Crockett: I have not had a chance to see them.

(Court clerk calls defendants. All are present.)

Mr. Crockett: I understand defense counsel would like to have Mr. Takahama for recross-examination.

KIICHI TAKAHAMA

Recross-Examination

Mrs. Bouslog: Officer Takahama, will you state how many of the defendants in this case you identified yesterday?

Mr. Crockett: I object. Counsel stated she wanted further cross-examination, the same thing has been covered.

Mrs. Bouslog: Wait just a minute. I will count them and ask him.

Mr. Crockett: Okeh.

Mrs. Bouslog: According to my records you

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

identified 22 of the defendants in this case as having been present at the Harbor on the afternoon of July 14th, is that correct?

A. You mean the ones here right now? I have no idea of the number of defendants. [89]

Q. When you identified the people yesterday, you identified them in approximately the same order each time. I wonder if you will indicate by starting here, (points to front bench) each one of the people you recall being present on that occasion. Start in the front.

Mr. Crockett: This witness has been examined and it is not necessary. That is not proper cross-examination. When a person is recalled for recross-examination as a matter of courtesy if you have any further questions it is proper, but to go over the same thing over and over again, it is not proper recross-examination. I object and ask that Mr. Takahama be excused from the stand.

Mrs. Bouslog: Your Honor, yesterday I did not ask this officer to identify the people that he recalled having been present down there by starting at the beginning here and going down. It is proper examination and I fail to see why counsel is afraid to have these names called in that way. If he did it yesterday he can do it today. The reason I ask that he do it in this order is because yesterday he went down in approximately the same order, instead of going in the front. He apparently had in mind

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

a particular individual and searched through the crowd until he found that particular individual. He did not identify the individuals except in that order. What I want to find out is whether this witness can pick out 22 people from the crowd and I ask the Court to give a ruling on this.

Mr. Crockett: Counsel has said I am afraid. I am not. It is not a question of being afraid, I want to follow the ordinary and regular procedure. She has excused this witness. We are wasting the time of the Court and the defendants who want to get back to work. [90]

Mrs. Bouslog: The defendants will waive that business of getting back to work.

Mr. Crockett: It's the same question of going over and over this and delaying the Court's, defendants' and my time. If there is any other question you have not asked it would be all right, but I object to your going over the same ground, over and over again.

Mrs. Bouslog: This question was not asked the other day. He identified the witnesses in a particular order. I want to see if he can identify them in other than a particular order chosen by him. I believe the defendants have a right to ask that he identify the people as they appear in the Court room.

The Court: You object because he picked them out and then identified them?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: I want to see if he can do it in an order which I prescribe. I want him to identify them as they are here in Court.

The Court: He identified them by sight and name, so I think we are going over it again.

Mrs. Bouslog: It's not the same thing. I think it is a proper question and ask the Court it be permitted to be answered.

The Court: You mean to have him identify the persons again?

Mrs. Bouslog: Yes, starting at the beginning, starting with the first bench and going right down the line.

The Court: That would be the same procedure as we had the other day.

Mrs. Bouslog: It is not the same thing. I submit it to the Court for a ruling.

The Court: Court will deny that.

Mrs. Bouslog: During the course of your testimony yesterday did you see any written memo of the names of the defendants? [91]

A. I have none in possession right now.

Q. Did you have any in possession yesterday?

Mr. Crockett: You are referring to the time when he was sitting here on the stand and testifying?

Mrs. Bouslog: Yes.

Mr. Takahama: I did not have any in possession.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Could you see the list Mr. Crockett had on the table? A. I did not see anything.

Q. When you were looking down when testifying you could not have seen any written memo?

A. Nothing of that sort.

Q. You are positive you did not see the list lying on the table?

A. I am positive. I could swear to that.

Q. That's all.

Mr. Crockett: Nothing further. Call Mr. Desha.

Mrs. Bouslog: I wonder if we could have a brief recess.

The Court: We will take a short recess.

(Court recessed at 9:25 a.m. Court reconvened at 9:34 a.m.)

ADOLPH HANEBERG DESHA

being first duly sworn, testified as follows:

. Direct Examination

By Mr. Crockett: What is your name?

A. Adolph Haneberg Desha.

Q. Where do you live? A. Lanai City.

Q. What is your occupation?

A. Assistant Personnel Director, Hawaiian Pineapple Company.

Q. How long have you been living here in Lanai City? A. Some thirteen months.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Now in your work as assistant personnel director, what are your duties? What do you have to do in regard to carrying [92] out that job?

A. We are required, for one thing, to handle employment.

Q. By handling employment do you mean to engage employees? A. Yes.

Q. And when you do that what is the general procedure you go through, interviewing the prospective workers? A. Yes.

Q. What else do you have to do? We have an interpreter here to interpret the questions, so will you go a little slow so as to allow her to interpret the questions. Now, in addition to arranging for the engaging of new personnel what other duties do you perform in connection with your work?

A. Well, just about anything that comes up.

Q. That is, after a man is engaged do you come in contact with this individual in any way which would cause you to know him or become acquainted with him?

A. Yes, we do. One record we maintain in the Personnel Office is a list of employees for classification by labor grade.

Q. And in performing these duties have you become well acquainted with the persons employed here at Lanai City?

A. I believe quite familiar.

Q. That is, you know them by name as well as by face.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Not all of them, but a great number of them.

Q. About how many employees do you have at Lanai City?

A. Between 1700 and 1800 people.

Q. Mr. Desha, I am going to show you a group of pictures. Referring to the first sheet of Prosecution's Exhibit "B", I believe it is, containing several individual pictures and ask you to examine that sheet and take the pictures one by one. That is, beginning with number 1 and see [93] if you can identify any person or persons in those pictures. Would you give us first the name of the person and his location in the picture?

Mrs. Bouslog: May I see the duplicate set? (Prosecution hands duplicate set of pictures to defense counsel.)

A. In this picture (No. 1), Hiroshi Oshiro, the third individual from the left in the rear row.

Q. Facing the camera? A. Yes.

Q. Do you see him in the Court room at the present time? Would you mind pointing him out to us?

(Witness walks over to Defendant Hiroshi Oshiro and identifies him by placing his hand on defendant's shoulder.)

Q. The man sitting along the sidewall, with the yellow shirt? A. Yes.

Q. How long have you known Oshiro?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. As long as I have been here.

Q. What kind of work does he do?

A. He is a mechanic in the auto shop. His foreman is Fujigama.

Q. Any other persons in that first picture that you recognize, that is, picture number 1.

A. Not that I could be certain of. I cannot get a full view of their faces.

Q. Now, examine number 2, any there?

A. None there.

Q. Proceed to the next picture and see.

A. In photograph number 3. I recognize two individuals there, Hermano, he is the fourth from the left counting all of them, a three-quarter view of the right side of his face. (Points him out in the picture.) [94]

Q. Could you point him out here?

A. Sitting the third from this row in the brown shirt.

Q. What is his work?

A. Simon is a truck driver in the truck department, usually drives buses.

Q. How long have you known him?

A. Well, I got to know his name some time last August.

Q. You mentioned another you recognized in that picture.

A. He is the second individual from right to left, starting at the right of the photograph, going from

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

right to left, the second individual there in the picture. He has a striped jersey or polo shirt, with a cap on.

Q. What's his name? A. Unciano.

Q. Point him out.

A. I do not recognize him here at the present time.

Mrs. Bouslog: Maybe its because he does not have a striped shirt on.

Mr. Desha: Photograph number 4. The fourth individual from the left is "Blackie" Tomita.

Q. Just before we go to that one, you mentioned Unciano. Where is he employed?

A. He is in the harvesting department.

Q. How long have you known him?

A. I believe he is in Clarito's gang.

Q. Now you mentioned in picture number 4?

A. Tomita, fourth from the left with the polo shirt, twin stripes across the chest.

Q. He is present here?

A. Sitting in the fourth row back. (Points to defendant, who stands up.) That's Blackie Tomita.

Q. What kind of work does he do?

A. That I am not certain of. I think Blackie works in the land preparation department, I am not certain of that.

Q. Any other person in the fourth picture that you recognize? A. Oshiro.

Q. The same one you identified in picture number 4? A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. We will pass that one. Proceed to the next picture.

A. Photograph number 11. Gigo Barbosa.

Q. Which one is that?

A. He is at the top of the photograph.

Q. Any other person in there?

A. Pablo Pineda. He is the man in front of Gigo.

Q. Can you pick out Pineda and see if he is in the Court room?

A. This is the man known to me as Pablo Pineda.

(Defendant rises and is touched on the shoulder by witness.)

Q. What is his work, so far as you recall?

A. Pablo is one of the field construction crew. He works with Harry Shimono, part of the engineering set-up on the plantation.

Q. How long have you known him?

A. I would say I first ran into the name some time last August.

Q. We will proceed to the next picture.

A. Photograph number 14, Andres Velasco. He is the man on the left of the photograph. Jack Sipe,—

Q. Has he any other name?

A. To my knowledge it is Narcisso.

Q. Now Velasco, where do you say he is?

A. Andres is the man on the left of the photo-

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

graph and Sipe is the man next to Velasco in the photograph.

Q. Will you see if you can find or point out to us Velasco here in the Court room? [96]

A. He is the gentleman back here with the crew cut, right alongside of the window, second man from the right.

Q. What is his work?

A. Andres is one of the loading men here on the plantation. I got to know him because he is a pretty good volleyball player.

Q. And the man you mentioned as Sipe. Can you point him out?

A. He is the second man on the second bench, in the green shirt.

Q. What is his job?

A. Jack is down at the Harbor.

Q. About how long have you known him?

A. I think I got to know Jack shortly after I arrived up here, last July or August.

Q. Will you proceed to the next picture?

A. Photograph number 19. Gigo Barbosa.

Q. We will pass that. Passing you the third sheet, will you examine these and do the same, Mr. Desha?

A. Photograph number 21. John Maile.

Q. John Maile, okeh, which one is he?

A. He is the second individual on the left, with the baseball cap.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. He is not in these proceedings. Pass to the next picture.

A. Photograph number 22, the fourth individual from the left facing the camera is Melicio Riutorio.

Q. Can you pick him out here in the Court room?

A. The man on the last bench, sixth from the right, with the dark glasses. (Points him out.)

Q. What does he do, so far as you recall?

A. Melicio is in the harvesting department, one of the loading men, one of the old-timers here, has been here a good number of years. [97] Some twenty years before I arrived, really an old-timer.

Q. How long have you known him? Since you came?

A. No, I would not say since I came, it was sometime around the end of the year.

Q. I see. Will you proceed to the next picture?

A. Photograph 34, fourth individual from the left with his hat on is Basiliso Arruiza. Sometimes I think his name is Bonifacio, first name, that is.

Q. Any other persons there?

A. Next to him is Andres Velasco again.

Q. The same one you recognized in some other picture? A. Yes.

Q. Arruiza is not in these proceedings, so we will proceed.

A. Photograph number 25, the second individual from the left,—the photograph shows a side

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

view of the right side of his face is Bartolome Agliam.

Q. Could you pick him out, please?

A. Sitting in the fourth row with the "palaka" shirt on, second man from the wall in the fourth row, with glasses.

Q. Showing you the next sheet, beginning with number 29.

A. In number 29 is an individual known to me as one of the police officers from Maui, Mr. Murayama.

Q. Okeh. He is not a defendant here, so we will pass him.

Mrs. Bouslog: Maybe he should be. He was present. That seems to be the test.

Q. Anyone else? A. No, sir.

Q. Showing you the next group of pictures, beginning with number 39. [98]

A. Photograph number 44, Arruiza.

Q. Which individual is that?

A. First on the left as I face the photograph.

Q. No one else in that?

A. No. Photograph number 46.

Mrs. Bouslog: What was number 44, not clear, Arruiza?

Mr. Crockett: He is not in these proceedings.

A. Photograph number 46, again I see Melicio Riutorio.

Q. Well, we won't repeat that. The next one?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Photograph number 47. The individual on the immediate left of the photograph, profile view, is Norberto Quinton.

Q. Can you pick out Norberto Quinton in this crowd?

A. This individual here, with his chin in his right hand, on the side here.

Q. How long have you known him?

A. I have known of his work in the carpenter shop. He is a very good man, one of the newcomers here and arrived sometime after January, 1946.

Q. He is an employee in the carpenter shop?

A. Yes.

Q. What would be the next picture recognized? Anyone else in number 47?

A. No. Photograph number 49, Basiliso Arruiza.

Q. We will pass him. The next one? This is the last sheet and the end of the series, if the Court please.

A. Photograph number 52. The same person, Quinton.

Q. Proceed to the next one.

A. Immediately back of him on Norberto's right, as I face the photograph is a profile view of Simon Hermano.

Q. The same one you previously identified?

A. Yes. [99]

Q. Any other person in that photograph?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Photograph number 55, Gigo Barboza.

Q. Pass him. Now showing you the group of pictures which has been received in evidence as Prosecution's Exhibit "C", beginning with number 57. Will you examine those and see if you see anyone you recognize?

A. In number 58 I see Fred Johnson.

Q. This is the Mr. Johnson who is one of the assistant superintendents? A. Yes.

Q. Whereabouts is he?

A. He is on top of the pineapple bin. If you divided the photograph up into fourths he would fall on the extreme right of the photograph, standing up.

Q. Any other persons there that you recognize?

A. No, sir.

Q. Proceed to the others. A. No others.

Q. Showing you the second sheet of the series beginning with number 63.

A. Photograph number 67. Again I see Simon Hermano.

Q. He is the same one you previously mentioned? A. Yes.

Q. In number 66?

A. I recognize Officer Murayama with his back to the camera, and Mr. Bilson.

Q. Where is Mr. Bilson?

A. He is standing on the loading table with his back to the camera. I would say it would be the loading table at Kaumalapau terminal.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. How are you able to recognize him from the back?

A. He is probably about as skinny as I am. I know him quite well. When I first came here, I lived in the same building with him. [100] I see him a lot in the daily course of my work.

Q. Showing you the sheet marked Exhibit "E" beginning with picture number 68.

A. In number 68 is George Ramaila. He is the person on the extreme right of the photograph as I face it.

Q. Can you pick him out in the Court?

A. The first man sitting along the wall here on the right with the watch on his arm.

Q. Where does he work?

A. He is one of the truck drivers in the truck department.

Q. How long have you known him?

A. Shortly after I came up here in July. I used to know his brother very well.

Q. Any other persons? A. No, sir.

Q. Showing you the first page of the group marked Exhibit "D" beginning with picture number 71, will you examine those and see if you recognize any of those?

A. Approximately in the middle of photograph number 71 again I see Andres Velasco. He has on a white "T" shirt.

Q. The same person you previously identified and pointed out to the Court? A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Proceed to the next one.

A. Photograph number 73.

Q. How about number 72, anyone there?

A. I see Melicio Riutorio. He has on a dark polo shirt.

Q. He is the same one you previously identified and pointed out to the Court.

A. Yes. Photograph number 73, Gigo Barbosa.

Q. No one else in there?

A. Basoliso Arruiza. [101]

Q. Okeh. Both of those are not in these proceedings. How about the next one?

A. Photograph 75. The individual on the far right of the photograph as I face it is Domingo Basinga.

Q. Can you pick out Domingo Basinga?

A. He is the individual outside with the blue shirt on, on the porch, standing here against the railing.

Q. I will ask that the Court have the person step to the door.

Mrs. Bouslog: Will the person with the blue shirt on, standing next the railing come to the door?
(Defendant comes to door.)

Q. Is that the person you pointed out?

A. Yes.

Q. The man with the glasses on?

A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Any other persons in that picture that you can recognize?

A. Photograph number 76, the person—starting at the right of the photograph as I face it, with the white T-shirt, or polo shirt is Eustaquio. When I first knew him his name was Raas. His name has been changed since then to Hubin.

Q. Can you point him out to the Court?

A. On the second bench, first one next the window.

Q. With the greenish shirt? A. Yes.

Q. Anyone else you recognize?

A. Not that I could be certain of.

Q. Any other on that page?

A. Photograph number 77. About in the middle of the photograph is Asst. Chief Freitas. On the extreme left of the photograph in the lower left hand corner is Capt. Seabury of the Maui County police force.

Q. Anyone else? A. No, sir. [102]

Q. Anyone else on that page that you recognize?

A. No.

Q. Coming back to Hubin. How long have you known him?

A. I am not certain as to the exact time. I should say between nine and twelve months.

Q. What kind of work does he do?

A. Eustaquio is a supply truck driver in the spray section of the field maintenance department.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Then the last picture, which is Exhibit "D", do you recognize anyone in that one?

A. No, sir, I do not.

Q. Cross-examine.

The Court: We will have a brief recess before cross-examination.

(Court recessed at 10:25 a.m. Reconvened at 10:40 a.m.)

Cross-Examination

The Court: Are you ready to proceed?

Mr. Crockett: We are ready to proceed.

Mrs. Bouslog: Mr. Desha, were you at the Harbor at the time the so-called riot took place?

A. No, mam.

Q. Your testimony here then has been based wholly upon the pictures which you saw?

Mr. Crockett: To which we object, if the Court please. Mr. Desha's testimony is based upon his knowledge of the witnesses gained as Personnel Director.

Mrs. Bouslog: I meant his identification of the men.

Mr. Crockett: That is his job.

Mrs. Bouslog: I mean identification of the defendants here.

Mr. Crockett: Just the form of the question.

Mrs. Bouslog: You identified the people in this

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

court room, you picked them out from pictures and then you identified them here, is that right? [103]

A. Yes.

Q. Calling your attention to picture number 1, —can you recognize where that scene was taken. Was it against the sea wall down at the Harbor?

A. I would not say it was against the sea wall, the individuals might be sitting on top of the wall.

Q. It is a peaceful group of people sitting on the sea wall?

A. It is a group of people sitting on the sea wall.

Q. It does not portray a riot scene?

A. No.

Q. Will you examine picture number 4?

A. Yes.

Q. Who was the individual you identified from that picture?

A. I see in that photograph Blackie Tomita.

Q. Does that picture portray a riot scene, and can you tell where the picture was taken?

A. It does not portray a riot scene. I recognize the guard rail at Kaumalapau terminal. That is on the mauka or land side.

Q. Do you know if the place shown there is inside or outside the kapu line?

A. To my knowledge it is outside.

Q. Calling your attention to picture number 14, can you tell where that picture was taken?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Immediately back of Andres Velasco, from my observation that is part of the sea wall.

Q. And that picture shows a somewhat peaceful scene?

A. Yes, it does—a group of men talking.

Q. Calling your attention to picture number 22. Can you recognize the location in which that picture was taken?

A. It appears to me that the section of the sea-wall at Kaumalapau appears on the extreme left hand side of this particular photograph number 22.

Q. And it portrays a peaceful scene?

A. It portrays a group of men walking to and fro.

Q. But at an area outside the so-called kapu line?

A. Judging from the height of what appears to be the sea wall I would say it was outside the kapu line.

Q. Now, calling your attention to picture number 24, can you identify the place where that picture was taken?

A. No, mam, I cannot identify the exact location where that was taken.

Q. Does it portray a peaceful scene?

A. It shows two men in the center of the photograph talking and walking. There is nothing there to make anyone think otherwise.

Q. Calling your attention to picture number 46,

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

can you identify the locale at which that picture was taken?

A. Photograph number 46, to my knowledge is taken in the proximity of the wharf area used for the docking of the Mana.

Q. That was not marked off inside the kapu line? A. No, mam.

Q. Does that portray a peaceful scene?

A. It shows a number of men standing. I would say it did show a peaceful scene.

Q. In number 47 whom did you identify there?

A. Melicio.

Q. In number 47 can you identify the place where that was taken?

A. It appears to be a section of the sea wall in the background on the immediate right.

Q. Does that describe or does the picture indicate a peaceful or riotous scene?

A. Well, I do not know.

Q. Well, from looking, from the evidence of the picture itself? [105]

A. I do not know what the raising of hands here is for.

Q. Well it does not look like they were going to strike anyone, does it?

Mr. Crockett: I object.

Mrs. Bouslog: Would you say it indicated a menacing attitude? A. No.

Q. Calling your attention to picture number 68,

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

can you identify the location at which that picture was taken?

A. No, mam, I cannot say the exact location, but I think I can say where it was taken if it was taken at Kaumalapau.

Q. Well, from the picture you cannot tell where it was taken? A. No.

Q. Would you say the man in the center tying his shoe looks like he is terrifying anyone?

Mr. Crockett: I object.

Mrs. Bouslog: Would you say it described a peaceful scene? A. Yes, mam.

Q. In the course of your work since July 14th have you had occasion to have any personal contacts with any of the defendants you have identified here this morning? A. I have.

Q. This is in connection with your work. Which ones have you interviewed or talked to since July 14th of the people you have identified?

A. I have talked to Hiroshi Oshiro, "Molokai." As I recall now, he is the only one.

Q. Have you had occasion to talk to or see Simon Hermano since July 14th?

A. Yes, I have seen him on numerous occasions.

Q. In connection with your work as Personnel Director?

A. I would say no, just to say hello and wave.

Q. A person identified by you as Unciano, have

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

you had any occasion to talk to him in the course of your work? A. No.

Q. To your recollection then, you have had no occasion in the course of your work to talk to individuals whom you have identified except for Hiroshi Oshiro?

A. No—and I would not say my talking to “Molokai” had to do with work.

Q. Calling your attention to picture number 76, who was the person in there you identified?

A. I recognize Eustaquio Hubin.

Q. Are you so positive from looking at that picture that you could not be mistaken under any circumstances?

A. I am certain in my own mind, that is all.

Q. Have you had occasion to examine and study other pictures of this defendant?

A. No, I don't believe I have seen any other except in the “Pine Parade” when he got married.

Q. Do you believe it is so clear and certain that you could be absolutely positive it could not be anyone except Hubin?

A. To my mind, I am certain.

Q. That's all.

Mr. Crockett: When you examined picture number 3, Unciano—may I ask again if you see him in the picture?

Mrs. Bouslog: Your Honor, this is re direct after cross examination. Mr. Crockett has no right

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

to go into this matter. Mr. Crockett cannot go back and fill in his case now and give the witness a chance to identify anyone else, that is [107] absolutely improper. He did not ask my permission to reopen direct examination.

Mr. Crockett: I ask permission to be allowed to ask the witness whether he is able to locate Unciano in the Court room, as at that time he could not find him in the Court room. People are moving around outside, coming and going. The Court is aware of the ruling that when the Prosecution puts on a witness we conduct a direct examination and there is a cross examination and we can have re direct examination which does not have to go into everything covered in cross examination. The witness has not been excused. The prosecution, after all, is not a superhuman being. We may overlook something at one time. It was a case of overlooking the man, who was searched for and not found, and I am simply asking whether the man has come into the Court room. I was not allowed to go out and look for him. It is proper, it is re direct examination and permissible.

Defense counsel rises to speak.

Mr. Crockett: I am going to keep on talking as long as you stand up. I will conclude if you will not interrupt me.

Defense counsel sits down. There is further argument by prosecution.

Exhibit K—(Continued)

(Testimony of Adolph Haueberg Desha.)

Mrs. Bouslog: May it please the Court, I asked specific permission to recall for cross examination and then was not permitted to go into it because it was something already gone into. Your Honor knows everyone was present, that is, we just called the roll. He was not able to identify him. Mr. Crockett closed without asking him to identify him and it is not proper now for him to locate the person. I suggest on the basis of proper procedure Mr. Crockett is not entitled to ask the question.

Mr. Crockett: Counsel is certainly in error when she says everyone was present because we called the roll. Mr. Desha had to walk outside the Court room. I don't know where he was. The Court is entitled to know whether or not he can be identified. He may have gone to the toilet. I have not insisted each one remain in the room.

The Court: The Court will permit the witness to be identified. What is his name?

Q. Unciano. Will you identify him?

A. The fourth man from the left, last row.

The Court: Point him out. (Witness does so.)

Mrs. Bouslog: He was sitting in the second row when he was not able to identify him before.

Mr. Crockett: That's all, no further questions. Mr. DeMello is here for cross examination on previous testimony. Call Mr. DeMello.

Exhibit K—(Continued)

LT. FRANCIS DEMELLO

Cross Examination

The Court: Mr. DeMello has already been sworn.

Mr. Crockett: You understand you are being recalled for purposes of cross examination?

A. Yes, sir.

Mrs. Bouslog: Mr. DeMello, you testified on direct examination you were present at the Harbor from approximately 3:30 on July 14th, is that right?

A. That's correct.

Q. Where is your regular station as a police officer?

A. I am regularly stationed at Wailuku, Maui.

Q. What is the nature of your assignment?

A. Officer of identification.

Q. What does that comprise?

A. I am in charge of the records bureau. [109]

A. Record and identification. In my line of work it is necessary for me to travel from one island to the other in the event there are disturbances of any nature.

Q. You were brought over here because you anticipated a disturbance?

A. No, I was brought over here when I received a call from Asst. Chief of Police Freitas, requesting that I come to Lanai and to bring my camera along with me.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. When did you receive that call?

A. I received it on Saturday, about 8:00 a.m.

Q. And what time were you told to be present, when did you actually arrive on Lanai?

A. I caught the regular plane that morning on Saturday.

Q. How many cameras did you bring?

A. I brought two.

Q. Were both of the cameras down at the Harbor that day? A. I just had one.

Q. And the camera has a telescopic sight?

A. Telescopic lens.

Q. That lens is removable, you can put it on and take it off? A. Yes.

Q. Did you receive any specific instructions from your superior about taking pictures before you went down to the Harbor? A. No not necessarily.

Q. Did you at any time during the day before you went down to the Harbor have any conversation or talk to Mr. Bilson or any representatives of the Company?

A. I talked to Mr. Bilson because I think he had some film. He had a couple rolls and I felt I did not have enough to——

Q. Enough for what? [110]

A. Enough to do any picture taking. I wanted to have a supply on hand in the event I needed them.

Q. When did you talk to Mr. Bilson?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. On Saturday when I came in.

Q. I am directing your attention to July 14th. Did you have any conversation with Mr. Bilson on that day before you went down to the Harbor?

A. Not that I remember.

Q. Did you have any conversation after you arrived at the Harbor at about 3:30?

A. I may have spoken to him, but just casually, not in reference to any police work.

Q. Now, where did you stand when you were taking the pictures which were introduced in evidence. Can you point out on the map the place you were standing when you were taking pictures?

A. (Witness points to place on map.) Looking this way.

Q. Do you recall where Bilson was standing?

A. No.

Q. Where Heminger was standing?

A. No.

Q. Put a cross there.

A. I was standing approximately inside, no, I was inside the kapu line.

Q. While you were taking the pictures that describe the so-called riot scene, and at all times when it was going on, you were standing approximately there?

A. No, I later moved over to the pineapple bins. I do not know the exact location of the pineapple bins. I was standing here—(points to map)—tak-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

ing pictures this way looking at the pineapple bins.

Q. And all the pictures you took during the scene were facing toward the pineapple bin?

A. Excepting I did move a little to the left and then later on went over by the bins and took a shot up in the air towards the top of the pineapple bins.

Q. And you describe your position there—(points on map)—taking pictures all the time during the time the riot scenes were going on?

A. Yes. Later on, when I got through with that magazine the incident was over. Then the fellows began coming here. (Points to map).

Q. Your back was to the sea wall at all times, you never faced the camera towards the sea wall at any time during the time when the so-called riot was going on?

A. I took no pictures of what was going on there, no.

Q. You say you looked over there when this was going on?

A. Yes, I turned around and looked.

Q. When you turned around towards the sea wall did you notice any men sitting or standing there? A. Not in back of me.

Q. You say you were taking pictures here (points to map) and you say you remember looking behind you? A. That's right.

Q. Can you state whether you remember or no-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

ticed any people sitting or standing along the sea wall?

A. I don't remember seeing anyone there. There may have been.

Q. You had your back to it at all times?

A. Yes.

Q. Maybe there were fifty or sixty people? [112]

A. I would not say fifty or sixty people. If there was a group that large I am sure I would have noticed——

Q. The question was whether you did notice any people along the sea wall and you said you were facing in the opposite direction and then you said you would have noticed if there had been a large crowd.

Mr. Crockett: Well, let him finish what he has to say.

Mrs. Bouslog: I did not ask his opinion. What time did you say it was when the so-called disturbance was over?

A. I did not say, you mean the riot incident, that's what you are talking about?

Q. Yes, approximately what time was it over completely—pau. Strike completely. What time was it when the alleged riot was pau?

A. About 4:45 I would say.

Q. Did you notice any people coming down to the Harbor after 4:45? Either walking or coming in cars?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

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Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

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A. About 4:45 I would say.

Q. Did you notice any people coming down to the Harbor after 4:45? Either walking or coming in cars?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. I do not remember. They were all milling around there.

Q. My question is not what the people who were there were doing, but whether you noticed any persons coming down in cars, or on foot, or from the road up above the Harbor?

A. I am trying to answer your question. Right after the riot the people started to walk to the sea wall on the above road mauka toward where the monkeys are and they started walking all around, you could not say whether or not they had just come in cars, or got off some car.

Q. In other words, you could not positively say nobody arrived after the incident was pau?

A. That's right.

Q. You did not happen to notice any? It is possible that they could have? A. That's right.

Q. It's been quite some time since your direct examination and I have just now been given the transcript. Do you recall whom you identified of the defendants as being present on your direct examination?

A. Just two men, Diego Barbosa and Pablo Pineda.

Q. And as I recall the rest of your testimony was directed to the taking of pictures?

A. Yes.

Q. Now, you were asked by Asst. Chief Freitas to come over to Lanai and you arrived on Saturday.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

On Monday, the 14th you went down to the Harbor about 3:30, with a group of other police officers.

A. With Freitas, Medeiros, Takahama, no — Seabury.

Q. Your ordinary assignment is never a police officer in the sense of keeping the peace, your job is to identify people?

A. No, not necessarily. I am a police officer in the event I have to make an arrest. I perform those duties just as well as any other officer.

Q. But ordinarily you would not be summoned from Maui for the purpose of handling police matters, but for identification? A. That's right.

Q. And while you were down at the Harbor you were acting in your capacity of taking pictures and not actually serving to keep peace. Did you interrupt your picture taking at any time to restore order?

A. Yes, after I got through taking one magazine in the camera I immediately started with the other officers, started yelling to those people to go back.

Q. But you took pictures first and then did that?

A. Yes.

Q. Did you take any pictures at the time before the so-called riot incident started? [114]

A. Yes, I had taken a picture of the barge coming in.

Q. The barge was arriving just about the time you got there?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. No, after, about 4:15-4:20, about that.

Q. And you would say 4:15-4:20 and you have already testified that the alleged riot was pau about 4:45, did you take any pictures after 4:45?

A. I did, I took two magazines, two rolls.

Q. In other words, during the alleged incident you merely finished out one magazine in your camera which began with the docking of the barge, is that right?

A. I did take some pictures in the early part of the morning when they had the picket line.

Q. You did take pictures in the morning?

A. Yes.

Q. Did you finish up that roll at any time and remove it from your camera? A. Yes.

Q. When you went down there at 3:30, when did you begin taking pictures, when the barge was coming in? A. That's correct.

Q. You did not take any pictures before the barge was coming in? The first pictures shown on the roll would be the pictures of the barge, of the things that happened that afternoon?

A. Yes, when I went back to the dock when the barge came in.

Q. You continued to take pictures from the time the barge came in until the particular roll was taken, was through? A. Yes.

Q. Now those pictures—you did not reload your camera until after the thing was over?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. Yes. [115]

Q. So that the pictures actually taken at the Harbor at the time preceding and immediately following the alleged riot would just be on that one. I am trying to get you to identify the film which was taken during the time the alleged riot happened. Would it be correct to say that the pictures continued from the time the barge came in to the end of the film? A. Yes.

Q. Those would be the only pictures that directly show any of the activity that went on during the alleged incident?

Mr. Crockett: You mean pictures taken by this witness?

Mrs. Bouslog: Yes, pictures that you took.

A. Yes.

Q. Do you recall what numbers belong to the pictures?

Mr. Crockett: That would be 1 to 55 I am sure. "A" is the film and "B" the stills taken from that. I would like to request the Court to have a police officer bring in Exhibit "A."

The Court: Call Sgt. Takahama. Please bring us Exhibit "A."

Mr. Crockett: 1-56 is correct.

Mrs. Bouslog: And these pictures numbered 1 to 56 which were admitted in evidence you testified were all of that roll of film you took during that time? May I see them?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Mr. Crockett: Would counsel make that question more definite. Do you mean the actual riot or the riot pictures on the film?

Mrs. Bouslog: The only part introduced in evidence was the part taken during the actual alleged riot.

Mr. Crockett: During and immediately after.

Mr. DeMello: Some of the film taken in the morning are shots taken of Casimero Millare in the field. [116]

Q. What time did your film run out?

A. About 4:30.

Q. You kept on taking pictures after the incident was pau on the same roll?

A. No, mam, the last scenes I remember taking on that roll was of Pablo Pineda and Diego Barbosa up on the bin. If you will pull the film out as far as the white piece——

Q. The thing I am puzzled about these pictures is the sea wall. (DeMello fixes film, Counsel and witness examine film.) I am trying to have you identify the exact point on the film where it shows or reflects the scenes which is charged as the riot. Those are again the sea wall around that. There are three splices here, is that correct? All this film was introduced as Exhibit "A"? A. Yes.

Q. Will you identify the point at which the actual pictures of the riot ceased and those which were taken against the sea wall?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

(Witness identifies the film by unrolling it off by hand.)

Q. Now I want you to identify the place on that film at which you ceased taking the pictures of the so-called riot and finished out the magazine?

(Witness identifies place on the film.)

Q. You mean the scene of the pineapple bin? You say you were taking pictures looking towards the pineapple bins while the riot was going on. I notice pictures of the sea wall. Where did you stop on the riot scene and start on the sea wall? You did not stop taking pictures until the film ran out?

A. Yes.

Q. You did not attempt to restore order until you finished your films?

A. That's correct. (Shows films to defense counsel.) That's up on the pineapple bin.

Q. This is after everything is over and the people returning? A. Yes.

Q. So that everything after that point would be after everything was over?

A. Everything over on top of the pineapple bin, yes.

Q. There was no violence when they turned around and started to go back to the sea wall?

A. They were not orderly.

Q. When they left the kapu area they were all right? A. Yes.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

(Defense counsel studies film, with Lt. DeMello unwinding film by hand and Mr. Crockett holding it.)

Q. So that part of the film there represents the pictures you took from the time the barge came in until the riot incident was over and the people started back towards the sea wall? A. Right.

Q. So that the remaining film on this roll was taken looking towards the sea wall and was taken after the incident was over?

A. It was taken immediately after they started to go back from the pineapple bin.

Q. The alleged incident happened inside the kapu line? A. Yes.

Q. There are two splices on this film?

A. Yes.

Q. You have identified this one, do you recall what time the films on the second splice were taken?

A. They were taken about five to five.

Q. In other words, about ten minutes afterwards? Can you estimate how many feet of film would be between that and the end of the film? [118]

A. I am not sure.

Q. The second splice was taken ten minutes after the incident and how about the third?

A. Right after I got through with the second.

Q. How long did it take you to do that? According to your time schedule, about five to five you started taking the second roll? A. Yes.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. How long did it take you to run out the second splice there?

A. Well, it takes time to load the camera. About three to five minutes.

Q. It took 3 to 5 minutes to take the second splice of film? A. Yes.

Q. So that it would be almost 5 o'clock when the third splice would be taken—after five o'clock?

A. Just about five o'clock.

Q. Were you finished taking pictures about five?

A. No, I took the third splice after I got through taking the second.

Q. What's on the third?

A. It was of the men sitting on the wall alongside the wall. I remember there were some shots of the pineapples, some of the bin.

Q. Were you the only police officer who was summoned to take pictures during the pineapple lockout?

Mr. Crockett: To which we object. We do not know what you mean by pineapple lockout.

Q. You came over on Saturday? Was there any other police officer during the time you were here who was taking pictures? Operating a camera to show what was going on? A. No. [119]

Q. Did you take other pictures from the time you came on Saturday besides the ones you took at the wharf? A. That's right.

Q. You have a record of film of other days?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. That's right. We had a riot squad from Hilo.

Q. Were they here when you were here? Were they here when you arrived on Saturday?

A. They weren't here.

Q. When did they arrive?

A. If I remember, it was on a Tuesday or Wednesday.

Q. In other words they were not here on Monday? Do you know when they were instructed to come?

Mr. Crockett: To which we object, the question is incompetent, irrelevant and immaterial.

Q. Do you know, of your own knowledge, when they were asked to come? A. No.

Q. To the best of your knowledge, they arrived on Tuesday?

A. I do not know if it was Tuesday or Wednesday.

Q. How long did you stay over here?

A. I was here about a week.

Q. From Saturday to Saturday?

A. I don't know if it was Saturday to Friday or Saturday to Saturday. But I was here just about a week.

Q. Now, let's see. Will you take a look at the picture number 1. Can you identify that picture as being either the second or third splice?

A. That's correct, either in the second or third.

Q. Which was taken after the people all had re-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

turned? The second splice completed after peace had been restored?

Mr. Crockett: To which we object. [120]

Q. You just got through testifying that after you finished the first splice then the other one was taken about ten minutes after everyone was back?

A. Right.

Q. So that that picture was taken at least ten minutes after the incident occurred? Can you tell from your memory whether that is on the second or third splice?

A. I would not be able to say just exactly which.

Q. But in any event, it is at least ten minutes after?

A. Yes.

Q. How about picture number 2?

A. I think that's from the second or third.

Q. Picture number 3 would be in which group?

A. I think that picture would be in number 1.

Q. Before the men started back to the wall?

A. That's right.

Q. Picture number 4?

A. I think that's from the second or third.

Q. Picture number 5?

A. I believe that's from the first.

Q. Picture number 6?

A. I have no "6"—I think it has been taken out.

Q. Number 7? Number 7 would be on the first?

A. Number 7 would be on the second or third.

Then I have 9 and 11.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. They were on the first?

A. That's right.

Q. The next picture shown is number 12. Can you tell from number 12 which roll it is on?

A. I would not be able to tell on number 12.

Q. On picture number 13?

A. I believe that's on the second or third. [121]

Q. And number 14?

A. I think that's from the second or third reel.

Q. And number 15? A. Same.

Q. And number 16? A. Same.

Q. And number 17? A. Same.

Q. And number 18?

A. Same. Number 19, I think it is off the first.

Q. And number 20?

A. I think it is off the second or third.

Q. And number 21?

A. I think it is off the second or third.

Q. And number 22?

A. I think it is off the second or third.

Q. And number 23?

A. I think it is off the second or third.

Q. And number 24?

A. I believe it is from the second or third.

Q. And number 25?

A. I think it is off the second or third.

Q. And number 26? A. Same.

Q. And number 27? A. Same.

Q. And number 28?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. I do not have number 28.

Q. Number 29?

A. I think that's off the first.

Q. Number 30? [122]

A. I do not have 30. I have 31.

Q. All right, 31.

A. I think that's off the first.

Q. And number 32?

A. The second or third.

Q. 33? A. Off the first.

Q. 34? A. Off the first.

Q. 35, 36, 38?

A. I believe they are off the first reel.

Q. What's the next number?

A. 39. I believe that's off the first, but I am not sure.

Q. 40?

A. 44 and 45. I am not sure.

Q. Well, judging from the scenes themselves it would seem to be after the alleged riot?

A. That was after the incident on the pineapple bin.

Q. As a matter of fact all numbers 44, 45, 46, 47, 48, 49, 50 are after the incident on top of the bin.

Q. Is number 49 on the second roll?

A. First.

Q. Number 50? A. I don't know.

Q. Number 52?

A. I am unable to say whether it is in the first, second or third roll.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. Number 53, 54, 55?

A. On the first roll.

Q. Do you recall—did you observe where Mr. Bilson was standing when he was taking pictures?

A. No, mam. [123]

Q. He was not standing where you were, duplicating the pictures you were taking?

A. I don't know.

Q. Do you recall Mr. Heminger? A. No.

Q. Did you at any time talk to Mr. Heminger or Mr. Bilson before the pictures you took in the first roll were taken, talk to Mr. Bilson or Mr. Heminger? Did you talk to them first?

A. I don't remember.

Q. Did you talk to them at any time about taking pictures—any time?

A. About them taking pictures? No.

Q. What is your estimate of the number of people who crossed the kapu line during the so-called incident?

A. I think about 120, more or less.

Q. How many people would you estimate were down there or who came down before the incident happened? A. About 125 to 150.

Q. And you think that about 120 of them were inside the kapu line? A. More or less.

Q. I want your best estimate. From your recollection, what's your best estimate?

A. About 120.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. I think that is all the questions.

Mr. Crockett: I have no further questions.

The Court: We will adjourn until 1:30 p.m.

(Court adjourned at 12:15 and reconvened at 1:30 p.m.) [124]

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed.

Mr. Crockett: At this time the Prosecution rests.

Mrs. Bouslog: Your Honor, I move that the defendants be released from custody and an order rendered showing that the Prosecution has wholly failed to show proper cause why the defendants should be held. You will recall the words of the statute which requires that the District Magistrate, when persons are brought before him on a felony charge on a complaint of any person, that he should proceed to determine whether or not there is proper cause that a jury will convict the defendants if they are indicted by a Grand Jury. The defense is not going to offer witnesses or testimony as this does not constitute the offense of riot. The evidence is wholly insufficient. The defendants were charged under Chapter 277, R.L.H. '45. This statute has been on the books of the Territory since 1822. In that period of time there has never been a case where defendants have been charged under the statute where the statute has been so construed by the Supreme Court. It goes back to a law of the King

Exhibit K—(Continued)

in 1822, when seamen and ships used to come into the Harbor, and, much liquored up, went loose on the town with arms and force and rioted three or four days at a time, striking terror into the people. That is the basis of the statute. Prosecution is bound to show an offense which comes within the charge that is sufficient, that is a felony, carrying a 20-year penalty. Does your Honor believe that a jury composed of twelve members of the County of Maui would convict these 48 defendants of a felony for which they would be imprisoned for twenty years? It is preposterous that the Prosecution would ask for such a thing. (Further argument by defense counsel.) [125]

Mr. Crockett: Prosecution asks that a nolle prosequi be entered as to defendants Mariano Beldua, Valeriano Bugtong, Lorenzo Del Rosario, George Koohalahala, Shigeto Minami, Tiborcía Nesperas, Daniel Narceda, Heraldó Pacada, Elpidio Siruet, Francito Tocason, Pedro Unido and Pablo Vea. We ask that these defendants be discharged, if the Court please.

The Court: Nolle prosequi entered as to those defendants.

(Argument by respective Counsel.)

The Court: The court will not decide immediately in this case but will first look over the transcript of minutes before a decision is made.

Mr. Crockett: Will you notify us when Court will convene again?

Exhibit K—(Continued)

Mrs. Bouslog: I believe that it is not in keeping with the statute for you to hold the decision up, it is in violation of their rights. You are required to release or hold the defendants. The Court did not take notes in this case. They can't be held in violation of their rights for several weeks while you go and read the evidence already heard. They have a right to be released since no proper cause has been shown against them. It seems to me it would be proper to determine it right now.

Mr. Crockett: Counsel in her argument to the Court commented that the Court did not take notes. Court now wishes to have time to review and go over the testimony. The Court has a perfect right to do so. There is nothing in the statute which says it must execute "trigger justice." The Court is entitled to have time to consider this matter, and a statement of that kind is in contempt of court.

Mrs. Bouslog: They should be bound over or released. If [126] you would place a time limit, a reasonable period, that's one thing, otherwise they are being held.

The Court: My clerk will notify me when she has finished the transcript. A decision may be made in writing. Court will adjourn.

(Court convened at 2:45 p.m.)

/s/ ESTHER SHEHTAVIAN,

Court Stenographer.

Minutes Approved:

/s/ YOUNG WA,

Acting District Magistrate.

Exhibit K—(Continued)

District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 101—Riot

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al.,

Defendants.

DECISION

The defendants herein named, Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco, Daniel Kaopuiki, having been arrested upon a charge of riot and unlawful assembly, and appeared before me as Acting District Magistrate of Lanai District,

Exhibit K—(Continued)

in the County of Maui, Territory of Hawaii, upon a preliminary hearing and it appearing from the evidence presented upon proceedings that there is proper cause to believe that upon an indictment by a Grand Jury and upon a trial thereon, a conviction would take place before a trial jury, it is ordered that the said defendants be and they are committed to the Chief of Police of the County of Maui, or his authorized subordinate, to be held to await the action of the Grand Jury of the Second Circuit upon said charge.

Dated this 16th day of September, 1947.

/s/ YOUNG WA,

Acting District Magistrate, Lanai District Court,
County of Maui, T. H.

[Endorsed]: Filed Jan. 14, 1948.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT L
SUPPLEMENTING MOTIONS FILED
JANUARY 14, 1948

In the Circuit Court of the Second Circuit,
Territory of Hawaii

In the matter of the persons drawn to serve and
act as Grand Jurors in the Circuit Court of the

Second Judicial Circuit, Territory of Hawaii, during the A.D. 1948 Term, before the Honorable Cable A. Wirtz, Judge

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Monday, the 29th day of December, A.D., 1947, and in public, to-wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D., 1948, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-three (23) persons to serve and act as Grand Jurors at the January, A.D., 1948, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, onday, theday ofA.D., 19 . . , ato'clock in thenoon of said day:

That the names of the persons so drawn to serve and act as Grand Jurors, as aforesaid, are as follows:

1. Thomas Cummings
2. George K. Kenolio

3. John Kalia Kapaku
4. Toshio Ansai
5. C. J. Cleghorn
6. Richard Masaji Yamane
7. John K. Anakalea
8. Henry Rudolph Meyer
9. Paul K. Higa
10. Isami Imamoto
11. John F. Souza
12. Shigeo Maeda
13. Alfred Alu
14. George P. Cooke, Jr.
15. Samuel K. Bush, Sr.
16. Cecil M. Dickson
17. Henry B. Ibara
18. Philip P. Gamponia
19. Eddie Wong Ain
20. Archibald F. Hardey
21. Louis Eaton
22. Robert S. Jo
23. Charles W. Brooks

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Grand Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was

open and in public; notice of said drawing having been duly advertised in the "Maui News," a newspaper printed and published in Wailuku, Maui, in its issues of December 20th and December 27th, 1947.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 29th day of December, 1947.

[Seal] /s/ CABLE A. WIRTZ,
Judge of the Circuit Court of the Second Judicial
Circuit, Territory of Hawaii.

Attest:

/s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of this original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H. Jan. 15th, A.D. 1948.

/s/ LYONS K. NAME, JR.,
Court Clerk, Circuit Court, Second Circuit, Terri-
tory of Hawaii.

[Endorsed]: Filed Jan. 17, 1948.

[Title of District Court and Cause.]

BILL OF PARTICULARS

Now come the plaintiffs above named and pursuant to the motion of defendants, file this Bill of Particulars.

In support of paragraph XVI of the complaint in which Judge Cristy is charged with having prejudged or predetermined the motions or challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, plaintiffs state as follows:

That it appears from the transcript of the evidence, filed herewith, (Transcript of evidence filed with this Bill of Particulars set out on pages 567 to 1082) a copy of which is the possession of defendants, that Judge Cristy, from the outset of the hearing, viewed with disfavor the commencement of the challenge in the Second Circuit Court to the time-honored method of selecting grand jurors in the Territory of Hawaii, and personally resented a mainland lawyer appearing to present the challenge; that the said Judge Cristy indicated from the commencement of the hearing that he considered the challenge a personal attack upon the integrity and good faith of the Jury Commissioners of Maui County, one of whom is the duly acting Judge of the said Second Circuit, and that said predetermined attitude so biased and prejudiced said Judge Cristy that his rulings and comments as hereinafter set forth prevented plaintiffs from receiving a fair and impartial trial; that because of said bias

and prejudice Judge Cristy failed to recognize or consider that the plaintiffs' motive in filing said challenge was for the purpose of having the said Jury Commissioners follow and adhere to rulings of the Supreme Court regarding the method of selection of grand jurors to protect the constitutional rights of plaintiffs.

I.

That the following rulings and comments of said Judge Cristy are illustrative of the bias and prejudice manifested by Judge Cristy during the hearing on the challenge:

1. The Court ruled that no evidence as to the business connections of the grand jurors or the relationship of their business or business associations to the economic structure of the Islands was material without a preliminary showing that the action of the Jury Commissioners was reprehensible, although whether or not the action of the Jury Commissioners was reprehensible is immaterial. (Tr. p. 16.)

2. The court ruled that the fact that a person was an employer did not entitle plaintiffs to examine the members of the grand jury to ascertain from each grand juror whether, because of his employer status in the pineapple or related industry, he was in fact biased or prejudiced against workers, and particularly plaintiffs whose alleged offense grows out of a labor dispute with the pineapple industry. (Tr. p. 82.)

3. The court accused plaintiffs of impinging "a non-existent class hatred by employers against laborers," although the question of class hatred was and is immaterial and no such conclusion could be reasonably drawn from the affidavit. (Tr. p. 86.)

4. When counsel for plaintiffs pointed out that the questionnaire sent to prospective grand jurors asked for information regarding race and occupation, Judge Cristy informed plaintiffs' counsel that counsel came into the Territory of Hawaii from a different environment, thereby indicating Judge Cristy's conclusion that different rules of law should apply to selecting grand jurors in the Territory. (Tr. pp. 231-235.)

5. The court concluded and ruled that the legal attack upon the method of selecting the grand jury constituted a personal accusation against the grand jury and the court although there was no basis for the conclusion and ruling and the issue was immaterial. (Tr. p. 232.)

6. The court in reference to testimony on behalf of plaintiffs that the standard of living of proprietors and their views on social and economic questions frequently will be quite different from those of their employees, stated: "Does it say anything in there, Mr. Oshima, (the witness) as to whether a manager would be unable to take the same point of view as a laborer as to whether he got a punch on the jaw"? (Tr. p. 277.)

This statement manifests the court's bias and prejudice and his scorn and ridicule of the plaintiffs' challenge.

7. The entire statement made by the court to the Grand Jurors before plaintiffs were permitted to ask any questions currys the function of plaintiffs' counsel and demonstrates that the court at all times considered the challenge of plaintiffs as a personal attack upon the integrity of the defendants, and shows that the sole object of the court was to safeguard the good reputation of the defendants. (Tr. pp. 40-41.)

8. Judge Cristy ruled that plaintiffs were not entitled to prove or to offer to prove the jury commissioners selected and composed the 1947 grand jury and the grand juries for the five proceeding years of such a large number of Caucasians and of employer representatives, and such a small number of non-Caucasians and representatives of the working class in relation to the population of Maui County and persons qualified for jury service under the statute that the grand jury selected, if selected at random (to obtain a cross-section) from those qualified to serve would have occurred no more than once in ten million times. (Tr. pp. 89, 95, 104, 114.)

II.

That Judge Cristy in his decision manifested his bias and prejudice against plaintiffs by ignoring the following uncontradicted evidence establishing an illegal and unconstitutional method of selecting

and composing grand juries by the defendant Commissioners in order to exonerate said defendants against what he construed and held to be an unwarranted attack on the good faith and integrity of the defendants:

1. That the Jury Commissioners selected seventy-six (76%) per cent of the jury list or thirty-eight (38) persons who are members of the Caucasian and Caucasian-Hawaiian races (as shown by Tables I-II, Movants' Exhibits 5-6, Tr. pp. 67-92, copies of which Exhibits are attached hereto), which racial group represents only approximately twenty-five (25%) per cent of the population of Maui County, as well as of the estimated persons meeting the standards provided by statute for jury service; that plaintiffs showed that, with one exception, they are all members of the non-Caucasian races which represent approximately seventy-five (75%) per cent of the population of Maui County, as well as of the estimated persons meeting the standards for jury service provided by statute.

2. That one of the Jury Commissioners who served as jury commissioner from 1934-1947 except for the year 1945 (Tr. p. 262) testified that he picked "haoles" (Caucasians exclusive of Portuguese) because "I want to give them something to do—if they want a chance to run the country;" that "they do run the country;" that "the majority—lots of these—the Baldwins—they own the place;" "and if they want to run politics, just as well give them something to do in courts." (Tr. p. 290.)

3. That one of the jury commissioners who has served since 1934, except for the year 1945 (Tr. p. 262) admitted that within his recollection, there has never been a Filipino on the grand jury, that there are qualified Filipino persons in Maui County, and that the Jury Commissioners had never gone out of their way to get a Filipino on the grand jury (Tr. pp. 305-6); that plaintiffs showed that Filipinos constitute the second largest racial group in Maui County comprising eighteen (18%) per cent of the population (Table I, attached hereto), that there are Filipinos who are qualified for jury service, and that a large number of the plaintiffs are of Filipino nationality.

4. That although the returned questionnaires of Filipino citizens showed qualifications equal to or greater than some returned questionnaires of Caucasians, the returns of the Filipinos were marked by the defendant Jury Commissioners "questionable" or "not qualified," whereas the returns of said Caucasians were marked "qualified." (Tr. pp. 323-334.)

5. That the Jury Commissioners selected sixty-six (66%) per cent of the jury list or thirty-three (33) persons who are employed in managerial and proprietary capacities (as shown by Tables 3-5, Movants Exhibits 7-9, Tr. pp. 96-113, copies of which are attached hereto), which employment group represents only approximately 3.8 per cent of the population of Maui County; and that the Jury Commissioners selected two (2%) per cent

of the names on the jury list or one (1) person who is employed as an agricultural worker to which all the plaintiffs belong and which class represents approximately forty-six (46%) per cent of the population of Maui County.

6. That plaintiffs showed by the uncontradicted testimony of the Jury Commissioners that they selected the jury list from persons personally known to one or more of the Jury Commissioners (Judge Wirtz, Tr. p. 215; Chatterton, Tr. p. 366; Pombo, Tr. pp. 292-293).

7. That the clear and unmistakeable implication of the testimony of two of the jury commissioners (Tr. pp. 318-319, 343-345, pp. 352-353, p. 361) was that they selected a large number of businessmen because they believed businessmen and clerical employers better qualified and more competent jurors than the ordinary worker and that they considered a large number of the jurors selected men of outstanding business ability; that they put the same men back on the jury in successive years and alternate because they were "good jurors." (Tr. pp. 244-273.)

8. That the Jury Commissioners requested on the questionnaire sent out by them (Movants' Exhibit 12, Tr. p. 206, a copy of which is attached), information as to race and occupation, and hence that the Jury Commissioners were aware of the race and occupation of all persons to whom questionnaires were sent.

9. That the Jury Commissioners selected members of the Caucasian race and representatives of the employer class and interests in numbers so wholly disproportionate to the number of persons of these groups in the community and among those qualified for jury service that the defendants' position that the list selected represented a cross-section of the community was untenable; that plaintiffs showed that disproportion in these identical respects has continued without appreciable variation in percentage or numbers for at least five years prior to 1947. (Tables 1-5, Movants' Exhibits 6-9, Tr. pp. 67-113.)

10. That the failure of the Jury Commissioners to select representatives of the non-Caucasian races and members of the employee or working class in proportion to the number of these groups meeting the standards for jury service made defendants' position that the grand jury selected represented a cross-section wholly untenable; that plaintiffs showed this failure has persisted without changes for at least five years prior to 1947.

Dated: Honolulu, T. H., January 28, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 28, 1948.

MINUTES OF APRIL 19, 1948

Motions to dismiss the actions in toto, motions for summary judgments in favor of the defendants, and, alternatively, that if the actions be not wholly dismissed or if summary judgment be not entered for the defendants, that the actions be dismissed as to certain of the defendants, and that the plaintiffs be required to make certain matters in the complaints more definite, and that the plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded on a separate transaction or occurrence, have been filed in both Civil Nos. 828 and 836.

As to those parts of the Motions requesting that the claims set forth in the complaint be made more definite and certain, we are of the opinion that the protracted arguments of the last three days have demonstrated that the defendants, and their able counsel are fully informed of the nature of the complaints and that no further particularization or specification by the plaintiffs is necessary. Accordingly, these portions of the Motions will be denied and Orders to such effect will be entered.

As to those portions of the Motions going to the dismissal of the actions as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise (that portion of the Motions going to the dismissal of the action as to the Honorable Cable A. Wirtz, Circuit Court Judge of the County of Maui, will serve as an example) the court presently will express no opinion and will retain these parts of the

Motions for further consideration and ultimate disposition at an appropriate time.

As to all other parts of the Motions, the court is of the opinion that they must be denied and Orders to such effect will be entered.

April 19, 1948.

J. B., Jr.,

D. E. M.,

G. B. H.

[Title of District Court and Cause.]

ORDER

Before: Biggs, Circuit Judge, and Metzger and Harris, District Judges.

And, now, to wit, this 19th day of April, 1948, upon consideration of the briefs and arguments of the respective parties by their counsel in the above entitled cause on the motion for more definite statement, for the dismissal of the action and for summary judgment, It Is Ordered:

(a) That that part of the motion to the effect that the claims be made more definite and certain,
(b)

That that part of the motion moving for summary judgment in favor of the defendants, and (c)

That that portions of the motion moving for dismissal of the action, be and the same hereby are denied: and

It Is Further Ordered that those portions of the motion going to the dismissal of the action as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise be and the same hereby are retained for further consideration and for ultimate disposition at an appropriate time:

For the Court:

/s/ JOHN BIGGS, JR.,

/s/ DELBERT E. METZGER,

/s/ GEORGE B. HADDE.

[Endorsed]: Filed April 20, 1948.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the plaintiffs and defendants in the above-entitled action, by their respective counsel, but for the purposes of this action only, that:

1. With respect to paragraph I of the complaint, it is stipulated that the International Longshoremen's and Warehousemen's Union, hereinafter referred to as ILWU, one of the plaintiffs above named, is a voluntary unincorporated association and labor union having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as wage earners in the sugar, pineapple and longshore industries. At the time this action was filed there was a Territorial Council of said ILWU, of which the plaintiff, Jack Kawano, was president as well as

being a member of the ILWU; that at the present time said Territorial council is no longer in existence and said Jack Kawano, besides being a member of said ILWU, is president of International Longshoremen's and Warehousemen's Union, Local 137, consisting of the longshoremen members of the union in the Territory of Hawaii.

2. The citizenship of the individual plaintiffs (other than Kawano) is as set forth in the paragraph II of the complaint, and their race is as set forth in the schedule in said paragraph II and the allegations which follow said schedule, also in the affidavit of Harriet Bouslog filed January 7, 1948. No stipulation is made as the custom or practice of the Hawaiian Islands in classifying persons as Caucasians or otherwise. All of said individual plaintiffs are residents of the Territory of Hawaii and members of said ILWU, and with the exception of said Kawano, at all times here involved were and at the time the complaint was filed were wage earners employed by Hawaiian Pineapple Company, Limited.

3. Paragraph III is stipulated to except as to the last paragraph thereof, and in that connection it is stipulated that the defendants named therein went out of office as grand jurors as of January 12, 1948.

4. With reference to paragraph VIII it is stipulated that from July 10, 1947 to and including July 15, 1947 a labor dispute existed in the Territory of Hawaii, and among other members of the ILWU on

strike were many employees of Hawaiian Pineapple Company, including the individual plaintiffs other than Kawano.

5. With reference to paragraph IX it is stipulated that the individual plaintiffs named in the complaints were arrested by the defendant, Maui Chief of Police Jean Lane, or his agents, officers, employees and representatives, and charged as set forth in three certain complaints, being Exhibits D and E attached to the complaint, and Exhibit F attached to the stipulation of December 31, 1947.

6. With reference to paragraphs X and XII, it is stipulated that the grand jurors referred to herein were duly called to meet on July 25, 1947, and that prior thereto counsel for certain of the plaintiffs made and filed certain motions and challenges in the Circuit Court for the Second Judicial Circuit wherein said plaintiffs sought the disqualification and dismissal of the grand jurors. For the purposes of this case it is stipulated that the court may deem the same motions and challenges to have been made by the remaining individual plaintiffs who became plaintiffs in this case by the stipulation of December 31, 1947.

7. It is stipulated that the following exhibits are deemed admitted in evidence.

1. Plaintiffs' Exhibit D—Criminal Complaint against Barbosa and ten others. Filing Date: December 1, 1947, annexed to complaint.

2. Defendants' Exhibit H—Commitment of Bar-

bosa and ten others to await action of grand jury. Filing Date: December 10, 1947, in open court.

3. Plaintiffs' Exhibit E—Criminal Complaint against Makekau and four others. Filing Date: December 1, 1947, annexed to complaint.

4. Defendants' Exhibit G—Commitment of Makekau and four others to await action of grand jury. Filing Date: December 10, 1947, in open court.

5. Defendants' Exhibit K—Criminal Complaint against and commitment of Agliam and thirty-five others to await action of the grand jury. Filing Date: January 14, 1948, appended to motion.

6. Defendants' Exhibit L—Certificate as to the drawing of the 1948 grand jury. Filing Date: January 17, 1948, supplementing motion filed January 14, 1948.

7. Defendants' Exhibit N—Rules of Supreme Court of Hawaii relating to grand juries. Filing Date: January 20, 1948, appended to motion filed in Civil No. 836.

8. It Is Stipulated that the record of the proceedings before Young Wa, Acting District Magistrate of the District Court of Lanai, on the preliminary hearing had by the plaintiffs Agliam and others, including the testimony taken, as certified by said Acting District Magistrate to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, and thence certified by the deputy clerk of said Circuit Court, filed in this cause by defendants as their Exhibit K, appended to their motion of January 14, 1948, shall be deemed in evidence in this case

with the same effect as if said testimony were adduced by the defendants in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

9. It Is Stipulated that the exhibits received in the above mentioned preliminary hearing by said Young Wa, Acting District Magistrate of the District Court of Lanai, as prosecution's Exhibits A to G, inclusive, and transmitted by him to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, upon production by the defendants in this court shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

10. It Is Stipulated that the following shall be deemed admitted in evidence:

Defendants' Exhibit C-1, Certificate of Disqualification of Judge Wirtz, filed December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit C-2, Supplemental Certificate of Disqualification of Judge Wirtz, filed on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit D, Order and Authorization to Judge A. M. Cristy, filed on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit E, motions and challenges to the grand jury made by Barbosa and certain others filed on December 8, 1947 with the return to the order to show cause.

11. It Is Stipulated that the record of the pro-

ceedings before the Honorable A. M. Cristy, including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

12. It Is Stipulated that the exhibits received by said Honorable A. M. Cristy, upon production in this court shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

13. All parties reserve the right to introduce such further evidence and exhibits as may be material.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs,

/s/ RHODA V. LEWIS,

Assistant Attorney General,

/s/ WENDELL F. CROCKETT,

Attorneys for Defendants.

[Endorsed]: Filed April 23, 1948.

[Title of District Court and Cause.]

ANSWER

Come now the defendants above named and for answer to the complaint herein:

I.

Deny all the material allegations thereof not stipulated by the stipulation between the parties dated April 22, 1948.

II.

Aver that the criminal complaints against and warrants of arrests for the plaintiffs, Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Bartolome Agliam, Guilhermo Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Polipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco and Daniel

Kaopuiki, were made and issued as a result of the incidents and occurrences at Kaumalapau Wharf, Island of Lanai, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and as a result of evidence that said plaintiffs were principals in the offenses then and thereby committed, to wit: that on the 14th day of July 1947, said plaintiffs, having with divers other persons, the total numbering in excess of 125, assembled together, and having organized and formed a picketing line at the entrance to the Kaumalapau Wharf of the Hawaiian Pineapple Company, Limited on the said Island of Lanai, after being so assembled together, did, with other persons unnamed, in a violent and tumultuous manner rush en masse from such picketing line on to said dock where certain employees of said Hawaiian Pineapple Company, Limited, namely, Anthony Fernandes, Frederick S. Johnson, Jerome Harrington, Carl Kluge, Charles Marques and Buck Manriki, were at work for and on behalf of said company, engaged in loading pineapples on to a barge for transportation to the cannery at Honolulu, and the said plaintiffs, together with said other persons, did knock down, strike, beat with their fists and inflict wounds and injuries to and upon and otherwise assault such employees at work as aforesaid and by such assaults as aforesaid did intimidate and terrify and prevent such employees from continuing with and engaging in their employment; that the said plaintiffs and other person by participating in, promoting, aiding and

abetting such violent and tumultuous rush on to said dock and said actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

III.

Aver that the criminal complaint against and warrant for arrest for the plaintiffs, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes were made and issued as a result of an incident and occurrence at Lanai City, Island of Lanai, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and as a result of evidence that said plaintiffs were principals in the offenses then and thereby committed, to wit: that on the morning of the 15th day of July 1947, said plaintiffs, together with divers other persons, the total numbering in excess of 25, having assembled together, after being so assembled together did proceed to the home of Jacob Kalua Nahinu and Sam Kalua at said Lanai City, Island of Lanai, at about five o'clock a.m. on said day, and there, on the home premises of said Jacob Kalua Nahinu and Sam Kalua, while they were preparing to go to work as employees of Hawaiian Pineapple Company, said plaintiffs together with said other unnamed persons, suddenly and without any provocation, assaulted, beat with their fists, and inflicted wounds on and injuries to said Jacob

Kalua Nahinu and Sam Kalua, and by such assaults as aforesaid did intimidate and terrify said Jacob Kalua Nahinu and Sam Kalua and did prevent them from going to their place of employment; that the said plaintiffs and other persons, by participating in, promoting, aiding and abetting such violent and tumultuous entry upon the home premises of said Jacob Kalua Nahinu and Sam Kalua, and said actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously, and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

Dated in Honolulu, T. H., this 22nd day of April 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General,
Territory of Hawaii,

/s/ WENDELL F. CROCKETT,

Deputy County Attorney,
County of Maui,

Attorneys for Defendants.

(Endorsed) Filed April 23, 1948.

EXHIBIT E

District Court of Lanai, County of Maui,
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn says:
That Abraham Makekau, Elpidio Siruet, Mariano

Baldua, Narcisso Sipe, Antonio Mendes in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror tending and intending to strike terror into others, thereby being in unlawfull assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A.D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

[Endorsed]: Filed April 23, 1948.

In the United States District Court
for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
et al.,

Defendants.

ORDER OF CONSOLIDATION

Before: Biggs, Circuit Judge, and Metzger and
Harris, District Judges.

And, now, to wit, this 23rd day of April, 1948,

pursuant to oral stipulation, in open court, of the parties by their respective counsel,

It Is Ordered that the above entitled causes be and the same hereby are consolidated for hearing and trial.

For the Court:

/s/ JOHN BIGGS, JR.,

/s/ DELBERT E. METZGER,

/s/ GEORGE B. HADDE.

[Endorsed]: Filed April 23, 1948.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Thursday, April 15, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Mr. Walter D. Ackerman, Attorney General of the Territory of Hawaii, Mr. Robert Griffith and Miss Rhoda Lewis, Deputy Attorneys General of the Territory of Hawaii, counsel for the defendants herein. These cases were called for hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

Argument was had by Miss Lewis on said motions.

At 5:05 p.m., the Court ordered that these cases be continued to April 16, 1948 at 10 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Friday, April 16, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

At 10 a.m., Miss Lewis continued her argument.

At 11:28 a.m., Mrs. Bouslog presented her argument.

At 12:50 p.m., the Court ordered that these cases be continued to 2:30 p.m. this day for further hearing.

At 2:34 p.m., Mrs. Bouslog continued her argument.

At 5:14 p.m., the Court ordered that these cases be continued to April 17, 1948 at 9:30 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, April 17, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

At 9:40 a.m., Mrs. Bouslog continued her argument.

At 11:25 a.m., argument was had by Miss Lewis.

At 1:06 p.m., the Court ordered that these cases be continued to April 19, 1948 at 9:30 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Monday, April 19, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Grif-

fifth, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing.

The Court, through Judge Biggs, rendered its decision on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case. Said motions were denied by the Court.

A discussion was then had on the matter of procedure and trial herein.

At 3:20 p.m., the Court ordered that these cases be continued to April 20, 1948 for further discussion.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Tuesday, April 20, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for hearing on agreement of counsel as to stipulation of evidence and trial herein.

Following a further discussion by counsel, the Court ordered that these cases be set for trial—Friday, April 23, 1948 for plaintiffs' case and Saturday, April 24, 1948 for defendants' case and rebuttal by plaintiffs.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Friday, April 23, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for trial.

Mr. Jack W. Hall, regional director, International Longshoremen's & Warehousemen's Union, was called and sworn and testified on behalf of the plaintiffs.

War Food Administration Bulletins—Determination of Fair and Reasonable Wage rates for Persons employed in the Production, Cultivation, or Harvesting of Sugar Cane in Hawaii during Calendar years 1943 and 1944 were admitted in evidence as Plaintiffs' Exhibit No. 1, marked and ordered filed.

Copy of Agreement between Waialua Agricultural Company, Ltd., and ILWU Local 145-7 Waialua, dated September 29, 1945, was admitted in evidence as Plaintiffs' Exhibit No. 2, marked and ordered filed.

Copy of Agreement between the ILWU and Hawaii's Sugar Industry, 1947-48 was admitted in evidence as Plaintiffs' Exhibit No. 3, marked and ordered filed.

Copy of Letter dated July 11, 1946, ILWU to Hawaiian Sugar Planters' Association re: union demands for amendments to and modification of collective bargaining agreements was admitted in evidence as Plaintiff's Exhibit No. 4, marked and ordered filed.

Mr. Antonio T. Rania was called and sworn and testified on behalf of the plaintiffs.

Mr. Shigeto Minami was called and sworn and testified on behalf of the plaintiffs.

Mr. Mac Masato Yamuchi was called and sworn and testified on behalf of the plaintiffs.

Copy of Complaint, District Court of Wailuku, Maui, against Mac Masato Yamauchi, et al., was admitted in evidence as Plaintiffs' Exhibit No. 5, marked and ordered filed.

Copy of Indictment, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii, vs. Mac Masato Yamauchi was admitted in evidence as Plaintiffs' Exhibit No. 6, marked and ordered filed.

Copy of Judgment and Sentence, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii

vs. Mac Yamauchi was admitted in evidence as Plaintiffs' Exhibit No. 7, marked and ordered filed.

Mr. Nicholas C. Sibolboro was called and sworn and testified on behalf of the plaintiffs.

Mr. Charles C. Young, Assistant Manager, Maui Publishing Company, was called and sworn and testified on behalf of the plaintiffs.

Mr. Joseph K. Kaholokula was called and sworn and testified on behalf of the plaintiffs.

Copy of Indictment, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii vs. Joseph Kaholokula, et al., was admitted in evidence as Plaintiffs' Exhibit No. 9, marked and ordered filed.

Mr. Young was recalled to the witness stand and testified further.

At 12:24 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2:08 p.m., Mr. Kaholokula was recalled to the witness stand and testified further.

Copy of Plantation House Rules, Hawaiian Commercial & Sugar Co., Ltd., was admitted in evidence as Plaintiffs' Exhibit No. 10, marked and ordered filed.

Five photographs showing picket line, Paia, Maui, T. H., were admitted in evidence as Defendants' Exhibits "A-1" to "A-5," marked and ordered filed.

Mr. Benjamin K. Awana was called and sworn and testified on behalf of the plaintiffs.

Copy of Sections 11751 and 1171, Session Laws

of Hawaii, 1945, was admitted in evidence as Plaintiffs' Exhibit No. 11, marked and ordered filed.

Mr. Pedro de la Cruz called and sworn and testified on behalf of the plaintiffs.

Copy of House Rules of the Hawaiian Pineapple Co. in force on Lanai, July 1946, and a copy of safety rules of said company, were admitted in evidence as Plaintiffs' Exhibit No. 12, marked and ordered filed.

Mr. Noboru Honda was called and sworn and testified on behalf of the plaintiffs.

Mr. Kazuichi Hashimoto was called and sworn and testified on behalf of the plaintiffs.

Mr. Masao Gima was called and sworn and testified on behalf of the plaintiffs.

Mr. Hiroshi Oshiro was called and sworn and testified on behalf of the plaintiffs.

Map of wharf, Kaunalapau Harbor, Lanai, T. H., was admitted in evidence as Defendants' Exhibit "B," marked and ordered filed.

Six photographs, Kaunalapau Harbor, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "C-1" to "C-6," marked and ordered filed.

Mr. Shigeru Yagi was called and sworn and testified on behalf of the plaintiffs.

Mr. Henry Q. Aki was called and sworn and testified on behalf of the plaintiffs.

Mr. Narcisso Sipe was called and sworn and testified on behalf of the plaintiffs.

Mr. Abraham Makekau was called and sworn and testified on behalf of the plaintiffs.

At 4:55 p.m., the Court ordered that these cases

be continued to April 24, 1948 at 9:30 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, April 24, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Mr. Nicholas C. Sibolboro was recalled to the witness stand and testified further.

Copy of Oral Decision rendered on December 23, 1947, in Criminal No. 2242, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii, vs. Basiliso Arruiza was admitted in evidence as Plaintiffs' Exhibit No. 13, marked and ordered filed.

Mr. Jack Kawano was called and sworn and testified on behalf of the plaintiffs.

Mr. John B. Cockett, Clerk, Second Judicial Circuit Court, Wailuku, Maui, was called and sworn and testified on behalf of the plaintiffs.

Three large envelopes containing records of Criminal Nos. 2412 and 2413 of the Second Judicial Circuit Court, Wailuku, Maui, were marked for identification as Plaintiffs' 14, 15, and 16.

Report of the Jury Commissioners, and lists of names of persons selected to serve as jurors in and for the Second Judicial Circuit Court, Wailuku, Maui, for the year 1948 were admitted in evidence as Defendants' Exhibit "D," marked and ordered filed.

Mr. John E. Reinecke was called and sworn and testified on behalf of the plaintiffs.

Excerpt from *Interracial Marriage in Hawaii, etc.*, by Romanzo Adams, on definition of "haole," was admitted in evidence as Plaintiffs' Exhibit No. 17, marked and ordered filed.

1947 Annual Report of Pioneer Mill Company, Ltd., and Maui Agricultural Company, Ltd., and a copy of Occupational Index, by races, Territory of Hawaii, 1940, were admitted in evidence as Plaintiffs' Exhibit No. 18, marked and ordered filed.

Copy of Bulletin No. 687, United States Department of Labor on Labor in the Territory of Hawaii, 1939, was admitted in evidence as Plaintiffs' Exhibit No. 19, marked and ordered filed.

Table showing percentage of "Other Caucasians" in population of Maui County and on Grand Jury Panel for years 1942 to 1947; and table showing proportion of "Other Caucasians" in total population of Maui County, 1920 to 1940, were admitted in evidence as Plaintiffs' Exhibit No. 20, marked and ordered filed.

Table of racial and/or national extraction and occupation of persons on Maui Grand Jury list, 1947, was admitted in evidence as Plaintiffs' Exhibit No. 21, marked and ordered filed.

At 12:30 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2 p.m., the witness Reinecke resumed the witness stand and testified further.

Certificate of Eugene Bal, Clerk of Maui County, showing number of Filipino voters registered for the election years covering 1934-1946, was admitted in evidence as Plaintiffs' Exhibit No. 22, marked and ordered filed.

Photostatic copies of returned questionnaires of Grand Jurors, Maui County, 1948, on file with the Second Judicial Circuit Court, were admitted in evidence as Plaintiffs' Exhibit No. 23, marked and ordered filed.

Photostatic copies of returned questionnaires of Prospective Jurors, Second Judicial Circuit Court, persons of Filipino nationality, were admitted in evidence as Plaintiffs' Exhibit No. 24, marked and ordered filed.

Movants' Exhibits 1 to 21, Criminal Nos. 2412 and 2413, Second Judicial Circuit Court, Wailuku, Maui, were admitted in evidence as Plaintiffs' Exhibit No. 25, marked and ordered filed.

Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, was called and sworn and testified on behalf of the plaintiffs.

Mrs. Harriet Bouslog was sworn and testified on behalf of the plaintiffs.

List of Haoles on Grand Jury Panels, years 1944, 1945, 1946, and 1947, was admitted in evidence as Plaintiffs' Exhibit No. 26, marked and ordered filed.

At 3:23 p.m., the plaintiffs rested their case.

Ruling on motion to dismiss made by Miss Lewis was reserved by the Court.

Copy of Hawaiian Sugar Planters' Association Census of Hawaiian Sugar Plantations, June 30, 1947, ILWU Research Department, Hawaii Regional Office, was admitted in evidence as Plaintiffs' Exhibit No. 27, marked and ordered filed.

At 3:37 p.m., Mr. John B. Cockett was recalled to the witness stand and testified on behalf of the defendants.

Movie reels and album of photographs were admitted in evidence as Defendants' Exhibits "E-1" to "E-5," marked and ordered filed.

Plaintiffs' Nos. 14 and 16 heretofore marked for identification, were admitted in evidence as Plaintiffs' Exhibits Nos. 14 and 16, marked and ordered filed.

Map of Lanai City, Lanai, T. H., was admitted in evidence as Defendants' Exhibit "F," marked and ordered filed.

Mr. Jacob Kalua Nahinu was called and sworn and testified on behalf of the defendants.

Photographs of employees' homes, Hawaiian Pineapple Company, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "G-1" to "G-4," marked and ordered filed.

Photographs of employees' homes, Hawaiian Pineapple Company, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "H-1" and "H-2," marked and ordered filed.

Photographs of Jacob Kalua Nahinu were ad-

mitted in evidence as Defendants' Exhibits "I-1" and "I-2," marked and ordered filed.

Mr. Samuel Kalua was called and sworn and testified on behalf of the defendants.

At 4:25 p.m., the Court ordered that these cases be continued to Monday, April 26, 1948, at 9:30 a.m., for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Monday, April 26, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Maps of the Hawaiian Archipelago, Maui, and Lanai, were admitted in evidence as Defendants' Exhibits "J-1" to "J-3," marked and ordered filed.

At 10:05 a.m., the movie reels admitted as Defendants' Exhibits "E-1" to "E-4," were shown.

At 11:00 a.m., Mr. Andrew S. Freitas, Assistant Chief of Police, County of Maui, was called and sworn and testified on behalf of the defendants.

Police Officer's Commission of Andrew S. Frei-

tas was admitted in evidence as Defendants' Exhibit "K," marked and ordered filed.

Photographs, Kaumalapau Harbor, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "L-1" to "L-3," marked and ordered filed.

At 12:35 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2 p.m., Mr. Freitas resumed the witness stand and testified further.

Booklet, Maui Grand Hotel, showing map of Maui, T. H., was admitted in evidence as Defendants' Exhibit "M," marked and ordered filed.

Copy of Maui Police Commission as constituted during the calendar years 1946 and 1947 was admitted in evidence as Plaintiffs' Exhibit No. 28, marked and ordered filed.

Photograph, being Petitioner's Exhibit D, in Equity No. 325, Second Judicial Circuit Court, Wailuku, Maui, Maui Agricultural Co., Ltd., vs. ILWU, was admitted in evidence as Plaintiffs' Exhibit No. 29, marked and ordered filed.

Mr. Henry K. Long, Jr., Captain of the Police, Makawao District, County of Maui, was called and sworn and testified on behalf of the defendants.

Mr. John E. Seabury, Captain, Detective Division, County of Maui Police Force, was called and sworn and testified on behalf of the defendants.

Copy of Statement taken from Abraham Makekau on July 15, 1947, by Captain J. D. Seabury, was admitted in evidence as Defendants' Exhibit "N," marked and ordered filed.

Mr. Neil Donoghue, temporary Captain, Police Department, assigned to the Vice Division, was called and sworn and testified on behalf of the defendants.

Copy of Information, Summary Contempt Proceedings, Second Judicial Circuit Court, Wailuku, Maui, T. H., against Augustine Duz, et al., was admitted in evidence as Defendants' Exhibit "O," marked and ordered filed.

At 4:39 p.m., the defendants rested their case.

At 4:50 p.m., the Court ordered that these cases be continued to Tuesday, April 27, 1948, at 10 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Tuesday, April 27, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Mr. Benjamin K. Awana was recalled to the witness stand and testified on rebuttal.

Mr. Barcelino Pacpaco was called and sworn and testified on behalf of the plaintiffs.

Copy of the Constitution and By-Laws of the Oriental Benevolent Association was admitted in evidence as Plaintiffs' Exhibit No. 30, marked and ordered filed.

Mr. Pedro de la Cruz was recalled to the witness stand and testified on rebuttal.

Statement taken from Mac Masato Yamauchi before assistant Chief of Police Freitas on November 7, 1946, was admitted in evidence as Plaintiffs' Exhibit No. 31, marked and ordered filed.

At 11:20 a.m., both sides rested.

The Court ordered that these cases be continued to Saturday, May 1, 1948, for argument.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, May 1, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Certificate of the Treasurer of the Territory of Hawaii to the Amended By-Laws of the Oriental Benevolent Association was admitted in evidence as Plaintiffs' Exhibit No. 32, marked and ordered filed.

Copy of Letter from Maui Chamber of Commerce

dated April 29, 1947, to Harriet Bouslog was admitted in evidence as Plaintiffs' Exhibit No. 8, marked and ordered filed.

One movie reel was admitted in evidence as Plaintiffs' Exhibit No. 33, to be furnished later.

List of Filipino voters, Maui County 1946, was admitted in evidence as Plaintiffs' Exhibit No. 22-A, marked and ordered filed.

Plaintiffs' Exhibits Nos. 14 and 16 were remarked as Court's Exhibits Nos. 1 and 2, respectively.

Biographical sketch, William Little Lee, First Chief Justice of the Hawaiian Supreme Court, was admitted in evidence as Defendants' Exhibit "P," marked and ordered filed.

Report of the Hawaiian Commission, appointed in pursuance of the "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States," approved July 7, 1898; together with a copy of the Civil and Penal Laws of Hawaii, was admitted in evidence as Defendants' Exhibit "Q," marked and ordered filed.

Excerpt of Report No. 305, House of Representatives, Government for the Territory of Hawaii, re: The Judiciary of the Territory of Hawaii and of the New Territory after its Organization, was admitted in evidence as Defendants' Exhibit "R," marked and ordered filed.

At 9:50 a.m., argument was had by Mrs. Bouslog.

At 12:05 p.m., argument was had by Mr. Crockett, followed at 12:21 p.m. by argument by Miss Lewis.

At 1:01 p.m., these cases were taken under advisement.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union;
TERRITORIAL COUNCIL OF INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION, a voluntary, unin-
corporated association and labor union; JACK
KAWANO, individually and as a member of
the ILWU and as President of the Territorial
Council of the ILWU, DIEGO BARBOSA,
JOHN MAILE, VICTOR DEGAMO,
HARRY KAPENA KAOPUIKI, ISAMI A.
NITTA, AH SING AH HO, JAMES KIA
AIKALA, SHIGERU YAGI, BASILISO
ARRUIZA, MIDORI ODA, SHIGEYUKI
MATSUURA, ABRAHAM MAKEKAU, EL-
PIDIO SIRUET, MARIANO BALDUA,
NARCISSE SIPE and ANTONIO MENDES,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; INGRAM M. STAINBACK, individu-
ally and as Governor of the Territory of
Hawaii; E. R. BEVINS, individually and as
County Attorney for the County of Maui;

WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui; JEAN LANE, individually and as Chief of Police of the County of Maui; CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union; ANTONIO T. RANIA, individually and as a member of the ILWU and as President of the

United Sugar Workers, ILWU Local 142,
JOSEPH KAHALOKULA, LEVI KEA-
LOHA, BENJAMIN KAHAAWINUI, BEN-
JAMIN AWANA, LEOCADIO BALDOVI,
SOICHI DOI, YOSHIO NAGATA, LIONEL
HANAKAHL, JACK HAO, KOICHI ITO,
DAVID KINA, GEORGE KUKAHIKO,
CHARLES REVEIRA, TAKESHI SHI-
MANO, JOSEPH SEBASTIN ABREU,
RICHARD AH LEE SAM, FRANK R. AL-
VARES, LAMBERT APO, WILLIAM AU-
WELOA, ALFRED BOTEILHO, HARRY
BOTEILHO, ANTONE CALLIDO,
THOMAS COELHO, JOHN CORNIEL,
JOHN CRAVALHO, DANIEL CORNIEL,
CALIXTRO CASON, KIYOTO DOI, ERN-
EST FEITEIRA, JAMES BERISTO
FLORES, FRANK FRANCO, JULIO
FRANCO, ERNEST FERNANDEZ, HIRO-
SHI FUKUSHIMA, PULEHU FUKU-
SHIMA, ANTONE GOUVEIA, LOUIS
HERREIRA, JOSEPH HU, JUAN HARA,
JAMES F. HIGA, EDWARD GOMES JAR-
DIN, HAI CHOO KIM, ERNEST KAEA,
JOHN KAIO, SOLOMON KEALOA,
MARTIN LACIO, GEORGE LINDSEY,
GEORGE [2] MARTINS, FRED CARLOS
MEDEIROS, CHARLES PAULOS MONIZ,
JOHN NASCIMENTO, BUTA NAKASONE,
KIYOTO OGATA, JOHN ORTIZ, LAW-
RENCE TORRES PACHECO, ALFRED
PERREIRA, RAPHAEL PERRY, MAN-

UEL PERREIRA PICO, HENRY LEOPOLDO PONCE, MANUEL PONCE, JOE PETERS, JOSEPH PONCE, ROSARIO RAMOS, TAROICHI SASAOKA, HITOSHI SERA, MASAO SERA, LAWRENCE E. SHIROMA, FERMIN SOTO, WILLIAM SAKAIDA, EDWARD TAKEMURA, ROBERT TANIGUCHI, TAKEJI TOMITA, KIYOSHI TOSKA, ANTONE S. VIERRA, and MASARU YONEDA,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii; INGRAM M. STAINBACK, individually and as Governor of the Territory of Hawaii; E. R. BEVINS, individually and as County Attorney for the County of Maui, WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui, CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN

H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui.

Defendants. [3*]

Before: Biggs, Circuit Judge, Metzger, Chief Judge, and Harris, District Judge.

OPINION

By Biggs, Circuit Judge.

The Nature of the Proceedings

The two cases at bar may be disposed of in one opinion. The general jurisdiction of the court (its jurisdiction under Section 266 of the former Judicial Code and under Section 2281 of revised Title 28 of the United States Code, effective September 1, 1948, aside) is alleged to be founded on the second, third and fourth Federal Civil Rights Acts, Act of May 31, 1870, 16 Stat. 140, Act of April 20, 1871, 17 Stat. 13, and Act of March 1, 1875, 18 Stat. 335, 337, 8 U. S. C. A. Sections 41 (R. S. Section 1977), 43 (R. S. Section 1979), 44 and 46, and upon Section 24 (14) of the Judicial Code of 1911, now Section 1343 of revised Title 28 U. S. Code, and upon Amendments, I, V, VI, XIV and XIX to the

* Page numbering appearing at top of page of original certified Transcript of Record.

Constitution of the United States. Jurisdiction is also allegedly based upon Section 24 (1) of the Judicial Code of 1911, now revised Title 28, Section 1331, U. S. Code.¹

The complaints at the two numbers are quite similar in substance. The International Longshoremen's & Warehousemen's Union (ILWU), a voluntary unincorporated association and labor union, is a plaintiff at each number; [4] Kawano, individually and as a member of the ILWU and as president of what was the Territorial Council of the ILWU, is a plaintiff at No. 828. The no longer existent Territorial Council of the ILWU is also named as a plaintiff at this number. Rania, in his individual capacity and as president of the United Sugar Workers, ILWU, Local 142, is a plaintiff at No. 836. Both Rania and Kawano allege, as indi-

¹At No. 828, the plaintiffs by amendment set up jurisdictional amount and other allegations required by Section 24 (1) of the Judicial Code of 1911, now revised Title 28, Section 1331. Similar allegations are contained in the original complaint at No. 836. Jurisdiction in the cases at bar, however, lies in the court by virtue of Title 8 U.S.C. Section 43 (R.S. Section 1979), 8 U.S.C.A. Section 43, the Civil Rights Acts referred to above and Section 1343 of revised Title 28. Jurisdiction is also vested in this court by virtue of Section 1337 of revised Title 28. See the heading, "The General Jurisdiction of the Court".

The allegations as to jurisdictional amounts contained in the amendment at No. 828 and in the complaint at No. 836 deal with losses allegedly suffered by the ILWU, not by any local, and by individual plaintiffs. Pertinent findings as to jurisdictional amounts are made in note', *infra*.

cated, that they sue not only individually but in representative capacities on behalf of the ILWU's membership of approximately 30,000 persons in the Territory of Hawaii. The complaints assert that all other individual plaintiffs are residents of the Territory of Hawaii, members of the ILWU, and are daily wage earners in either the sugar industry or the pineapple industry of the Territory. This is found to be the fact. It is asserted that all the individual plaintiffs at both numbers, either ethnologically or as a matter of mores of the Islands,² are "members of races other than the Caucasian race." The particulars of these allegations were either proved or stipulated to.³ The races of the individual plaintiffs referred to were variously alleged, and proved or stipulated, to be the Malayan, the Polynesian and the Mongolian, sub widely varying national strains, viz., Filipino, Hawaiian, Hawaiian-Caucasian, Chinese, Japanese, Portuguese and Puerto Rican. These facts possess significance only in relation to the challenges and motions made to the jury commissioners of the Circuit Court of the Second Circuit of the Territory of Hawaii and to the motions and challenges made to the 1947 Maui County grand jury. Most of the in-

²This is applicable to Portuguese and Puerto Ricans and to persons whose ancestry contains either a Portuguese or a Puerto Rican strain, all of whom are considered by Island custom or mores to be non-Caucasians.

³See paragraph 2 of the stipulations of April 22, 1948 filed at Nos. 828 and 836.

dividual plaintiffs are alleged, and proved or stipulated to be citizens of the United States. Some of the individual plaintiffs are alleged, and proved or stipulated to be aliens and citizens of the Philippine Republic, or aliens and citizens of Japan, or aliens and citizens [5] of other nationalities. Again we deem these facts to be of significance only in relation to the attack on the jury commissioners or upon the grand jury of Maui County.

The defendants at both numbers are identical except that the defendant, Jean Lane, Chief of Police of Maui County, sued individually and as chief of police at No. 828, is not named as a defendant at No. 836. The defendant, Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, is sued individually and as attorney general. The Honorable Ingram M. Stainback, Governor of the Territory of Hawaii, is sued individually and as governor. E. R. Bevins, County Attorney of the County of Maui, and Wendell F. Crockett, Deputy County Attorney of the County of Maui, are sued individually and as County Attorney and Deputy County Attorney respectively. Judge Cable A. Wirtz, a Circuit Judge of the Territory of Hawaii, is sued individually and as one of the jury commissioners of Maui County. The jury commissioners and the 1947 grand jurors of the County of Maui are also sued individually and in their official capacities.

Both complaints allege *mutatis mutandis* that there were strikes conducted by the ILWU in the

sugar and pineapple industries in the Territory; that in furtherance of the objectives of the strikes, viz., improvement in wages, hours and conditions of employment, the individual plaintiffs engaged in "lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing."

The complaint at No. 828 alleges that Lane, Chief of Police of Maui County, caused the individual plaintiffs (other than Kawano) to be arrested and charged them with violations of an act of the Territory generally known as the unlawful assembly and riot statute, Revised Laws of Hawaii 1945, c. 277, Sections 11570-11584; that the plaintiffs Barbosa, Maile, Degamo, Kaopuiki, Nitta, Ah Ho, Aikala, Yagi, Arruiza, Oda and Matsuura were charged in a complaint executed before a district magistrate of [6] Maui County with violations of the same statute; and that the plaintiffs Makekau, Siruet, Baldua, Sipe and Mendes were similarly charged in a complaint also executed before a local magistrate. It is asserted also that the defendants Ackerman, Stainback, Bevins and Crockett have sought to present criminal charges framed on the complaints to the grand jurors of Maui County; that the defendants, Pombo and Chatterton, and Judge Wirtz, as jury commissioners, chose and composed Maui County grand juries in such a manner as to violate the constitutional rights of the plaintiffs and in violation of the laws of the United States and of the Territory of Hawaii.

The complaint goes on to recite that certain individual plaintiffs (particularly designated hereinafter) filed motions and challenges to the grand jury and to the methods employed in selecting its members for the reasons set out in the complaint, to be discussed hereinafter, that these charges and challenges were heard by the Honorable Albert M. Cristy, a Circuit Judge of the Territory of Hawaii, in mid-September 1947, but that he held the motions and challenges to be without merit, refusing to disqualify or to dismiss the grand jury. The plaintiffs then allege that the unlawful assembly and riot statute is unconstitutional in that it deprives them of their rights of free speech, press and assemblage and will subject them to criminal prosecutions if they exercise their constitutional rights. Agliam, Abraham Makekau, and thirty-four other additional plaintiffs were added as parties to the complaint by stipulation and by order of the court. It is alleged that these thirty-six individuals are held to bail under a complaint charging them also with violation of the unlawful assembly and riot statute.

The complaint closes with the prayers, *inter alia* (1), that a temporary and permanent injunction issue from this court prohibiting the enforcement of the unlawful assembly and riot act against the plaintiffs and enjoining the submission to the grand jury of facts relating to the plaintiffs' actions for indictment based on the unlawful assembly [7] and riot act; (2) that this court declare the statute to

be unconstitutional; (3) that we adjudge the method used in selecting the grand juries of Maui County to be unconstitutional and contrary to law and order the grand jury discharged; and (4) that a three judge court be convened pursuant to Section 266 of the Judicial Code of 1911, to determine the case.

The complaint at No. 836 attacks not only the unlawful assembly and riot statute referred to in the complaint at No. 828, but also attacks the conspiracy statute of the Territory of Hawaii, Revised Laws of Hawaii 1945, c. 243, Sections 11120-11130. It asserts inter alia that the defendants Ackerman, Stainback, Bevins and Crockett presented "purported criminal charges alleging violation of the * * * unlawful assembly and riot statute and the conspiracy statute" to the grand jurors of Maui County who returned an indictment⁴ against the individual plaintiffs (other than Rania) based on the two statutes referred to. The complaint then makes the same allegations respecting the jury commissioners and the means employed in selecting grand juries as are set out in the complaint at No. 828 and alleges that the unlawful assembly and riot statute and the conspiracy statute are unconstitutional. The complaint then goes on to assert that the defendants in two criminal complaints entitled Territory of Haawaii v. Diego Barbosa, et al., and

⁴This is No. 2365 in the Circuit Court of the Second Judicial Circuit. Cf. the earlier indictment of October 30, 1946, Plaintiffs' Exhibit No. 9, referred to hereinafter under the subheading "Evidence".

Territory of Hawaii v. Abraham Makekau, et al., pending in the Circuit Court of the Second Circuit, referred to at length hereinafter under later headings, challenged the means employed to select the grand juries of Maui County; that these challenges were heard by Judge Cristy and were disposed of unfavorably to the defendants. It is alleged also that all the defendants in the criminal complaints referred to are plaintiffs at No. 836.

The complaint asserts that unless the unlawful assembly and riot statute and the conspiracy statute are held [8] to be unconstitutional and void all the plaintiffs will be deprived of their constitutional rights and "that it is necessary and imperative that this court assume jurisdiction in the matter and restrain and enjoin defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii, entitled Territory of Hawaii v. Joseph Kaholokula, et al., being Criminal Number 2365 * * * , in order that the plaintiffs shall have an impartial, representative and democratic Grand Jury."⁵

⁵The complaint at No. 836 contains a paragraph (XXI) which is devoted in substance to the financial losses and alleged damage to the ILWU and to the individual plaintiffs. As we have stated like allegations are set up in the amendment to the complaint at No. 828. The financial losses in each case are alleged to be in excess of \$3,000. In the view we take of the cases, insofar as jurisdiction is concerned, these allegations are immaterial.

But, if we are wrong in our decisions, to the end

The complaint ends with prayers substantially identical with those of the complaint at No. 828 but the first prayer asks specifically that the defendants Ackerman, Bevins and Crockett be enjoined from prosecuting or taking any further proceedings in connection with the Kaholokula indictment, Criminal No. 2365, now pending in the Circuit Court of the Second Circuit.

Upon presentation of the complaints to the United States District Court for the District of Hawaii, Senior District (now Chief) Judge Metzger issued rules to show cause and restraining orders in the usual form. Due to circumstances [9] over which the court had no control, delays were encountered in convening a court to dispose of the

that the causes may not have to be remanded by the reviewing Court for further findings, we find that losses resulting to the ILWU by reason of the enforcement of the unlawful assembly and riot act of Hawaii were in excess of \$3,000. We find that the enforcement of the statute caused a decrease in the membership of the union which loss resulted in the loss of dues to the union in excess of the amount of \$3,000.

As a matter of law these losses, since they resulted indirectly to the ILWU, are not cognizable as legal damages.

There are no allegations in either the complaint at No. 828, as amended, or in the complaint at No. 836, that individual locals of the ILWU suffered damages. Indeed, no local is named as a plaintiff in either action.

The damages to the individual plaintiffs in either action are not cognizable in terms of money.

This note and the findings contained therein are to be read in conjunction with those in note 1, *supra*.

cases. Motions were filed by the defendants in both cases for more definite statements, for the dismissal of the actions, for summary judgments, and for dismissal of the actions as to particular defendants on the grounds of misjoinder or lack of jurisdiction. Upon the convening of a court of three judges argument was had on these motions, briefs were filed and all were considered carefully by the court. On April 19, 1948 we entered an order denying the motions to make the claims more definite and certain, for summary judgments and for dismissal of the actions. The motions for dismissal as to particular defendants on the grounds of misjoinder or lack of jurisdiction were retained by the court for further consideration. At the request of the court, counsel entered into extensive stipulations respecting many undisputed facts. Answers were filed. It was in effect agreed by the parties that the court should proceed to final hearing,⁶ the defendants expressly reserving all their rights, including the right to renew every objection theretofore made by them or any of them as to the jurisdiction of the court over the parties, the causes of action alleged, or in respect to any other material

⁶Mr. Justice Stone and Mr. Justice Cardozo in their concurring opinion in *Borden's Co v. Baldwin*, 293 U.S. at p. 213, stated, "We are in accord with the view that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer." Such a likelihood existed in the instant cases.

matter. On April 23, 1948, and on successive days thereafter, the court heard the testimony of some thirty witnesses and received a very substantial number of exhibits. On the agreement of counsel for all the parties and with the permission of the court, the already voluminous record was supplemented with further exhibits. Briefs and requests for findings of fact and conclusions of law were filed later by the parties. [10]

EVIDENCE, SAVE AS TO THAT RELATING TO THE CHALLENGES TO THE JURY COMMISSIONERS AND THE GRAND JURIES OF MAUI COUNTY

For the sake of clarity we deem it desirable, if not necessary, to break down the statement of facts in this opinion into two parts. The first will deal with the labor picture in Hawaii and the incidents growing out of the strikes in the sugar and pineapple industries in the Territory. We will then discuss the law applicable to those facts. The second part of the fact statement will deal specifically with the motions and challenges to the jury commissioners and to the grand juries of Maui County. The second statement of facts will be found at a later point in this opinion and, immediately following it, a discussion of the pertinent law.

The ILWU and the Labor Picture

Hall, the Regional Director of the ILWU, testified that in 1944 the ILWU was engaged in organizing the sugar and pineapple workers in the Ter-

ritory; that the ILWU, following the organizational work referred to, represented substantially all⁷ of the sugar workers and a majority of the pineapple workers in the Islands; that the ILWU had spent about \$350,000 in the organization work and that it cost between \$600,000 and \$700,000 to administer the union in the course of a year and that this money was collected from dues-paying members. He stated also that as of 1943 the wages of the adult male workers had been fixed at \$1.84 a day by the War Food Administrator.⁸ To this was added a 15% bonus. At the time of the trial before us the approximate daily rate of pay of plantation common laborers or plantation harvesters was "well in excess of \$8.00 per day." The witness made it plain that in the contracts [11] negotiated with the sugar and pineapple industries by the union on behalf of its members there were and are no provisions for the arbitration of wage issues and that no employer in the two industries had ever submitted a wage issue to arbitration, and that the point on which negotiations had ruptured, bringing on the strikes referred to, was that of pay.

Hall testified also in substance that the enforcement of the unlawful assembly and conspiracy acts had necessitated a decision to terminate the pineap-

⁷Hall stated that only about 250 workmen, employees of two small companies, did not become members of the ILWU.

⁸See also Plaintiffs' Exhibit No. 1, S.D. No. 169, War Food Administration, Food Distribution Administration, Sugar Branch, issued June 25, 1943.

ple workers' strike. He said as well that " * * * during the sugar strike a considerable number of our members were charged with the violation of the Unlawful Assembly Statute, and because I was in consultation almost daily with the elected strike committee, we were informed by the workers on Maui that the charge had struck almost, you might describe it as terror into the workers involved there, because they felt that for carrying on legitimate picket activity and to face a sentence of twenty years meant that everything was being thrown at them, and the strike could not be effective." He said in respect to a contemplated strike by long-shoremen, members of the ILWU, that "it would be in effect suicide for the union to attempt to strike with such a statute hanging over their heads, a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur."

Hall's testimony stands virtually uncontradicted and we find his statements to be true. We think that we are entitled to find on this record, and we do find, that the ILWU, at all times pertinent to the instant disputes, has served and is serving as the collective bargaining agent for the sugar and pineapple workers in the Territory of Hawaii.

The labor picture and the sociological background of the sugar and pineapple industries in the Territory of Hawaii are indeed extraordinary. Ten owners own half [12] of all privately owned land in

Hawaii.⁹ The tendency in both industries has been toward larger plantations and toward the elimination of the so-called "adjacent planter" who by his very situation has become economically dependent on the larger plantation close to him. As it stated in the authority cited in footnote 9 *supra* and on the same page referred to in the note, "The land tenure system is quite different from that in any other part of the United States and is a legacy of the feudal system under native royalty which preceded annexation. At that time such lands as were suitable for sugar cultivation were owned in large tracts and were, therefore, leased or purchased in large tracts for plantation purposes. Nearly half of the land is still leased * * * Hawaiian sugar production from its very inception was on a larger scale than is typical of mainland farming. As the plantations have decreased in number, the output of the industry as a whole has increased in value." As the larger plantations have absorbed the smaller ones, a result economically though perhaps not socially desirable, the necessity of the majority of the inhabitants being employed by the larger operating companies has increased to the point where the bulk of the population on the "growing" islands could not exist without such employment. Moreover, most, if not all, of the employees live in com-

⁹See "Labor in the Territory of Hawaii, 1939", United States Department of Labor, Bulletin No. 687, Table 6 and notes cited to text at page 23. This bulletin is Plaintiffs' Exhibit No. 19.

pany houses in company towns and the tenure of their homes is dependent on their employment. Conversely, the companies cannot prosper or even operate without the labor, skilled and unskilled, of the residents of the growing islands. What has been said in respect to sugar growing is largely applicable to the pineapple industry as well.

The raising of sugar cane and the growing of pineapples are the two major industries of the Territory of Hawaii. A very substantial portion of the products of these industries moves in commerce to the mainland of the United [13] States. For example the raw sugar which the Territory of Hawaii has produced and will continue to produce in such vast quantities is sent almost entirely to the mainland for processing. These facts are common knowledge, of which we may take judicial notice, but see "Hawaii," published by the United States Department of the Interior, January 30, 1948, at pp. 8 and 19.

The tendency in both the sugar and pineapple industries, as the result of inexorable economic law operating against plantation owner or manager has been to compel them to get labor as cheaply as possible. To this end for over a hundred years, whether the owner or plantation manager has been native king or prince, Englishman, American or German, he has endeavored to bring into the Islands workers to cultivate his fields and harvest his crops as cheaply as possible. The nationalities imported have been Chinese, Japanese, Koreans, Okinawans,

Samoans, Filipinos, Portuguese, Spaniards and Puerto Ricans.¹⁰ There are even some persons of African or Afro-American descent on the Islands. The more numerous nationalities and their several racial backgrounds have mixed with the Americans of Caucasian ancestry or with the native Hawaiians; they have mixed very well indeed. There is presently little, if any, purely racial strife in the Territory and most of the nationalities and their progeny have made common cause in the interest of higher wages and better working conditions against the plantation owner or operator who is generally a "haole" or of the haole class or group. This has not always been true. See "Hawaii: a History," Kuykendall and Day, Prentice-Hall, Inc., 1948, at p. 275.

A satisfactory definition of the word "haole" is hard to encompass. It was defined by a witness¹¹ in the instant proceedings as generally "a person of mainland America[n] or of northern European stock * * *, not a person [14] of Portuguese, Spanish or Porto Rican descent." The word by simple dictionary definition means "white, foreign."¹²

¹⁰As an example of the wide national mixture we may state that one of the witnesses before this court testified that his nationality was "Chinese, Hawaiian, Samoan and Irish". See transcript p. 109.

¹¹Testimony of Dr. John E Reinecke, Transcript p. 213.

¹²"Introduction to the Hawaiian Language", Judd, Pukui and Stokes, Tongg Publishing Company, Honolulu, Hawaii.

Romanzo Adams, late professor sociology at the University of Hawaii in his book "Interracial Marriage in Hawaii,"¹³ put a gloss on the word which

¹³Published in 1937 by the Macmillan Company, pp. 114-6, 119. Mr. Adams wrote:

"In continental United States the people of the white race take themselves for granted and they classify the others and assign them their place in the social order. They are able to ignore any point of view different from their own. In Hawaii the white people were, for a long time, so few that the Hawaiians, who took themselves for granted, named and placed the other peoples. Of course they had to place (114) the British and Americans near the top, but the name, haole, was Hawaiian and it is best understood from the standpoint of Hawaiian experience. It has been necessary, therefore, in Hawaii for white people to see themselves somewhat as Hawaiians see them. They have accepted the Hawaiian designation, haole, and, of course, it has affected their conception of their role and their behavior.

"The word, haole, in the beginning meant stranger or outsider. It did not, at first, refer to color, but since nearly all of the early strangers were white men it came to be applied in its unmodified form only to white people. . . .

. . . When white men, mainly British and American, came to be somewhat numerous they occupied most of the important professional positions and they were executives and administrators, the owners of property and the initiators of policy. Of course there were many who occupied positions of minor importance, but even they were better paid than others and the way was more open to them for promotion. Thus the word came gradually to stand for a class of superior economic and social status. . . . It is reasonable to assume that the term, haole, was, for a long time, more significant of rank than of race. But as Hawaiians and part-Hawaiians in the

we think is correct. Mr. Adams said that the word referred to "rank," [15] rather than to "race." Actually the "haole" group in Hawaii is not far from being co-extensive with the entrepreneur and land-owning, land-controlling group. Specifically,

more recent times have been learning to speak the English language and, with it, taking over other elements of American (115) and European culture, they are more or less coming to think in terms of race.

"It must be emphasized that the term, haole, acquired its meaning from Hawaiian experience and attitudes and that its use has become current among all the other peoples because it stands for something they feel to be unique in the position of this group. As a local classificatory term its meaning is maintained not so much by the haole as by others. When some of the German plantation laborers won a better economic status the decision whether they were to be regarded as haole lay in part with the haole who might or might not give them social recognition, but more largely with the Hawaiians and others who might or might not be willing to treat them as haole." (116)

"Among the European immigrants of the nineteenth century the Portuguese were unique in relation to the status achieved. Coming mainly as plantation laborers they did not as promptly improve their status as did the Germans and Norwegians. The Portuguese were much more numerous. Mainly they were illiterate and for a generation they were indifferent to schooling. In general culture they differed more from the haole than did most of the other European immigrants. Because they were numerous and because their status was a humble one for a long time, there came to be a pretty definite mental set in relation to them. That is, they were regarded as a separate people, the 'Portegees.'" (119).

the "haole" group control the companies for which the individual plaintiffs (except Kawano and Rania) in the instant cases work. The labor relations between the land-controlling and the working groups are tense and have been so for generations. Put simply, the situation is one which call for moderation on both sides. Extreme measures whether undertaken by the employees or by the employers have afforded and will afford no relief. Each group is dependent on the other; both must regard each other's rights and privileges.¹⁴

The history of labor relations in the Territory of Hawaii has not been a happy one. On occasions that history has been bad indeed. It is certain that the 1924 strike of Filipino laborers and its attendant circumstances brought great strain to labor relations in the Territory and caused very substantial damage to them. In the eyes of the plantation owners and operators this strike was unjustifiable. It culminated in a riot at Hanapepe on the Island of Kauai in which four policemen and sixteen Filipinos were killed and a number of other persons wounded. Sixty of the seventy-six participants, who were laborers, were sentenced to prison terms, most, if not all, of them having been indicted under the unlawful assembly and riot act. Two of the defendants were sentenced to four years and eleven

¹⁴For additional material on this vital subject see "An Island Community". Lind, The University of Chicago Press, 1938, Movants' Exhibit No. 4, and "Hawaiian Americans". Burrows, Yale University Press, 1947.

months imprisonment; fifty-eight were sentenced to four years imprisonment and sixteen were acquitted. See The Hawaiian Annual for 1925, and the Honolulu Star-Bulletin, issues of September 9, 10, 11, 12 and 23, issues of October 10, 27 and issue of November 8, 1924.

An extraordinary feature of the prosecutions was the fact that the territorial government was apparently without funds to conduct them and accepted the support of the [16] Hawaiian Sugar Planters' Association to pay special prosecutors. See the Honolulu Star-Bulletin of September 13, 1924. There was in effect an arcing of law enforcement from the regularly constituted territorial authorities to prosecuting attorneys employed, albeit in the name of the Territory, by the planters. The employment of special prosecutors has met with the approval of the Territorial Courts not only in cases involving labor disputes but in other criminal cases as well. It is an undesirable custom of long standing whereby on occasion the administration of public justice has in effect been brought into the hands of the private property owner. It has occurred most frequently, perhaps, in criminal cases growing out of such labor disputes as the Hanapepe incident. See *Territory v. Soga*, 20 Haw. 71. As to cases not involving labor disputes see *Territory v. Robello*, 20 Haw. 7, and *Territory v. Chong Chak Lai*, 19 Haw. 437.

The facts stated in the foregoing paragraphs are notorious and we take judicial notice of them since

they occurred within this jurisdiction. Contemporaneous accounts may be employed by the court on analogy to refreshing recollection. See *Brown v. Piper*, 91 U. S. 37, 42. It is interesting to note the Territorial law on this subject. See *The Estate of His Majesty Kamehameha IV*, 2 Haw. 715, 718, and *Bishop v. Mahiko*, 35 Haw. 608, 618-624. We think that the Filipino workers' strike and its attendant circumstances resulted in the amendment to Section 4351 of the Revised Laws of Hawaii 1925, effected by the Act of March 15, 1929 (Laws of the Territory of Hawaii, Regular Session 1929, Act 4, p. 3) whereby the term of imprisonment which could be imposed for violation of the unlawful assembly and riot act of Hawaii was raised from five years to twenty years and we so find. The sentences of the convicted strikers had expired just as the Legislature convened in 1929 and there was evident fear that when these men returned to their people on Kauai some form of demonstration or labor trouble might result. The unlawful assembly [17] and riot act of the Territory of Hawaii is discussed at length under a later heading of this opinion.

The Incidents Which Led to the Instant Suits

The complaints and the indictments referred to in the pleadings and evidence in the cases at bar grow out of a number of occurrences, some involving a measure of violence, which arose in turn from strikes in the sugar and pineapple industries. The first occurrence, upon which the defendants in the cases at bar lay considerable emphasis, took place

at Paia on the Island of Maui and is referred to by common agreement as the "Paia incident." Others took place on the Island of Lanai (part of Maui County), one at the Kaumalapau harbor and wharf, the loading place for Lanai City, another occurring at or near Lanai City itself. These are generally described as the "Lanai incidents." There were other occurrences (some on the Island of Oahu) germane to the issues of the law presented by the instant cases and certain of these will be discussed hereinafter. A strike of the sugar workers in the Territory of Hawaii commenced on September 1 and lasted until November 19, 1946.¹⁵ This strike in effect was won by the union. A strike of the pineapple workers of the Territory commenced on July 10 and continued to and including July 15, 1947. This strike was lost by the union primarily because of the enforcement of the unlawful assembly and riot act.

The Paia Incident

We will deal first with the Paia incident which occurred on October 16, 1946 while the sugar workers' strike was in progress. Maui Agricultural Company is a sugar company having its mill at Paia on the Island of Maui, Maui County. A public

¹⁵Except at the Pioneer Mill Company, Lahaina, where the sugar workers' strike continued until January 2, 1947. It is asserted that the strike continued until the day last mentioned because of the refusal of the company to reinstate certain strikers. The point is immaterial in the decision of the litigations.

highway known as Baldwin Avenue lies between the company's office and its mill. Prior to [18] October 16, 1946 there had been extensive picketing of the company's mill with but little, if any, police interference. The hour set for the commencement of mill operations on the day the incident occurred was 7:00 A.M. Before the mill whistle blew, five persons, long-time residents of Maui and union men who had gone out on strike, appeared on the scene, desiring to return to work. One of them, Moniz, on the previous day had requested of Captain Long of the Paia police detail protection in getting through the pickets to go to work. After receiving this request Long had followed Moniz across the street to the picket line in front of the mill but the pickets stood shoulder to shoulder and would not let Moniz through though requested to do so both by him and by Long. Moniz then said that he was coming back "to go to work tomorrow."

Long reported this matter to Assistant Chief of Police Andrew Freitas and on the following day, the 16th, Freitas went to the scene with additional men of the regular police force from the Wailuku District. When the police arrived "orderly picketing"¹⁶ was going on. There was a line on the mill side of the street in double column. A few minutes after 6:45 A. M. the line at the mill entrance was increased to four columns, the number of pickets being between three and four hundred. After certain preliminary conversations between members

¹⁶So described in the defendants' brief.

of the ILWU, Kealoha,¹⁷ Joseph Kaholokula,¹⁸ and others, respecting the entry of the five workmen to the mill it was stated by Kaholokula that if the five men tried to cross the picket line, "police or no police", there would be violence and bloodshed.

When the mill whistle blew the five men started across the street toward the mill entrance escorted by the police. Nelson Souza, one of the men seeking admittance, was ahead with Captain Long beside him. About two hundred of the pickets left the picket line and converged, blocking the road and the mill entrance. Souza tried to get through the line at the point where Awana¹⁹ was but the latter braced himself and the mass of union men, without using their hands, pushed the group seeking entrance to the mill back about five feet. At this point both Freitas and Kaholokula called out that the men should stop the fracas, be quiet and listen. Freitas then read to the crowd Section 11773 of the Revised Laws of Hawaii 1945,²⁰ which provides a

¹⁷Kealoha was not an employee of the Maui Agricultural Company. He had come to Paia the previous day from Honolulu. He was, apparently, a kind of special agent of the ILWU.

¹⁸Whose first cousin, William Kaholokula, was one of the five men who sought admittance.

¹⁹One of the plaintiffs at No. 836 and subsequently a defendant in proceedings in the Circuit Court of Maui County, Second Circuit, as will appear in this opinion.

²⁰Section 11773 is as follows: "Any person who shall loiter, or loaf, or idle upon any public highway, street, or sidewalk, thereby impeding or ren-

rather substantial penalty for "Loitering." Thereafter, a second attempt was made by the five men and the police to get through the line of union men

dering dangerous the passagQe of pedestrians or others lawfully using the public highway, street or sidewalk, or thereby in any way imperiling the public welfare or thereby tending in any way to cause a breach of the peace, is guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$250 or imprisoned for not less than thirty days nor more than ninety days or by both fine and imprisonment."

The statute is very similar in tenor to that (Laws of the Territory of Hawaii, 1929, Act 256, Section 1, p. 351) held unconstitutional in *Territory of Hawaii v. Anduha*, 9 Cir., 48 F. 2d 171. The Act of May 8, 1929 provided in pertinent part, "Any person who shall habitually loaf, loiter and/or idle upon any public street or highway or in any public place, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than \$100 or by imprisonment for not more than one year or by both such fine or imprisonment."

There is a conflict in the testimony as to whether Freitas read Section 11773, the so-called "Loitering" law, or whether he read Sections 11574-11584 of the Revised Laws of Hawaii 1945, or perhaps only Section 11570 thereof, dealing with "Riots and Unlawful Assemblies", the unlawful assembly and riot act of the Territory of Hawaii. Freitas testified that he read Section 11773, the "Loitering" act; Awana testified that Freitas read from the unlawful assembly and riot act and the trespass statute, Section 11751. Counsel for the plaintiffs contend that Section 11771, dealing with vagrants, beggars, nickpockets, etc., was also read and it is pointed out that the "Loitering" law was not included in a small mimeographed copy of certain laws prepared by the police apparently in view of the strike situation. We find that Freitas named correctly the section which he read.

and into the mill. Awana, who previously had kept his arms on his breast, this time stretched them out to enlarge the barrier. No blows were struck but the group of five workmen and the police were pushed ten to twelve feet back across the avenue. Freitas asked the five workmen if they desired to try to get into the mill again and they replied that they did not wish to make a third attempt. Freitas then informed the union men that the attempt to put the five workmen into the mill was over, and he and Kaholokula had breakfast together and in fact exchanged congratulations that the incident had come to an end without physical injury to anyone.

After this occurrence picketing continued at Paia until the issuance by the Circuit Court of the Second Circuit of an *ex parte* temporary injunction in *Maui Agricultural Company, Limited v. International Longshoremen's and Warehousemen's Union, et al.*, Equity No. 325, limiting even peaceful picketing to three persons, the court stating in its opinion that picketing should be so restricted because of the territorial statute relating to unlawful assembly. See pp. 91-2 of the transcript of record in the appeal in the case of *International Longshoremen's Union v. Wirtz*,*

F. 2d, in the United States Court of Appeals for the Ninth Circuit. Logically, under the provisions of the statute as they will appear hereinafter, Judge

*No. 11568, decided September 29, 1948.

Watts should have restricted picketing to two persons, not three. An application was made to the Supreme Court of the Territory for a writ of prohibition to issue against Judge Watts of the Circuit Court of the Second Circuit of the Territory of Hawaii to compel him to vacate the injunction. In *L. L. W., U., et al. v. Watts, et al.*, 37 How. 304, rehearing denied, 12 at p. 445,² the Supreme Court of Hawaii, holding that the Norris-LaGuardia Act, 28 U. S. C. A. Sections 101-111, was not applicable to the territorial courts of Hawaii, refused to issue a writ of prohibition against Judge Watts to compel him to vacate the *ex parte* injunction restricting picketing previously referred to. The decision of the Supreme Court of Hawaii was affirmed, as we have said, by the Court of Appeals for the Ninth Circuit. It should be noted that Judge Watts' decision constitutes an important contemporaneous construction of the application of the unlawful assembly and riot act.

Following the Peda incident a complaint was sworn out before a district magistrate and subsequently seventy-eight members of the ILWT were arrested. The complaint is not in the record before

²The case of *Mau Agricultural Company, Limited, v. International Longshoremen's and Warehousemen's Union et al.*, Equity No. 325, in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, did not go beyond the temporary injunction stage because of the application for writ of prohibition referred to in the text and because the case became moot at the termination of the strike.

us but there is evidence from which we find that it was based on the unlawful assembly and riot act. Later an indictment²² charging seventy-eight persons²³ with violation of the unlawful assembly and riot act was returned by the 1946 grand jury of the Second Judicial Circuit of the Territory of Hawaii (Maui County) on October 30, 1946. Of these persons, at least seventy-five were members of the ILWU. Seventy-five of these defendants are plaintiffs of our No. 804.

Benjamin Awana, one of the plaintiffs at No. 804, testified that to his knowledge four persons who were named as defendants in the 1946 indictment were not present at the time the incident occurred. He named these four as (Donald) Touma, Hiroshi Sera, Johnny Nishimura and Frank Matsui. His testimony in this regard is substantiated in part by the fact that three of the four individuals whom he named, viz., Touma, Nishimura and Matsui, were not included in the subsequent indictment of December 2, 1947 returned by the Maui County grand jury.²⁴ We find as a fact that the three individuals

²²Plaintiffs' Exhibit No. 9, Indictment of October 30, 1946, returned by the 1946 Maui County grand jury.

²³One man named as a defendant in the indictment, Jose Plas, was dead on October 16, 1946.

²⁴For the sake of clarity we state that Plaintiffs' Exhibit No. 9 referred to in the opinion is the indictment returned on October 30, 1946 by the Maui County grand jury, viz., the grand jury of the Second Judicial Circuit of the Territory of Hawaii. The indictment of December 2, 1947 at Criminal No.

last named were not present during the occurrence of the Paia incident. But it is to be noted that Tomita, Nishimura and Matsui were under indictment, charged with violation of the unlawful assembly and riot act for more than a year before the Supreme Court of Hawaii held the indictment to be invalid for reasons stated hereinafter. See *Territory of Hawaii v. Kaholokula, et al.*, 37 Haw. 625. See also the facts relating to the finding of the indictment of December 2, 1947 under the next heading of this opinion. Roy Yasunaga, who also was named in the first indictment, was omitted in the second. No reason for the omission is supplied by the record. It is probable that he also, though arrested because of the Paia incident, took no part therein.

The facts last stated are of importance because of the very wide net which the police and prosecuting officers of Maui County threw about the workers who were on strike. This point will be amplified when the first Lanai incident is discussed. The arrests following both the Paia incident and the first Lanai incident were in fact made in mass.

It is desirable to point out here that Freitas and the other police officers had no intention of invoking

2365 was returned by the 1947 grand jury of the Second Judicial Circuit (Maui County) of the Territory of Hawaii. This is Exhibit E to the complaint at No. 836. Exhibit No. 9 incorrectly bears a stamped number "2365". The indictment returned on December 2, 1947 by the Maui County 1947 grand jury (Exhibit E to the complaint at No. 836) is actually No. "2365".

prosecution of the strikers under the unlawful assembly and riot statute of the Territory at the time of the happening of the Paia incident or until they had conferred with Deputy County Attorney Wendell F. Crockett of Maui County to determine the form which the complaint should take. We find Assistant Chief of Police Freitas to be a most credible witness and we accept his testimony with but one minor exception as indicated in note 25, *infra*. He stated that in Maui County complaints are prepared by the police and are taken to the County Attorney's office for perusal. Freitas stated that Mr. Crockett instructed him to make up the complaint in question "to read unlawful assembly". While we recognize the duty of a prosecuting officer to determine the form and the substance of a complaint, the invocation of the unlawful assembly and riot statute possesses unusual significance when viewed in the light of other pertinent circumstances of the cases at bar.²⁵ [23]

Facts Relating to the Testing of the Constitutionality of the Unlawful Assembly and Riot Statute by Kaholokula and Others.

The defendants named in the indictment of October 30, 1946, Joseph Kaholokula, et al., contested

²⁵It should be pointed out that prior to the occurrence of the Paia incident there had been but few (probably but four) arrests arising in connection with the sugar workers' strike. All had been made at Lahaina for minor offenses. One was for assault and battery when a member of the union struck a supervisor. The second arrest was for

the validity of the unlawful assembly and riot act and the sufficiency of the indictment in the Circuit Court of the Second Circuit. When these issues were decided unfavorably to them in that court they took an appeal to the Supreme Court of Hawaii. This appeal was possible by virtue of Section 9531, Revised Laws of Hawaii 1945, which provides for an appeal of an interlocutory order of a nisi prius court. The Supreme Court on November 26, 1947 held the statute to be constitutional but ruled also that the indictment was insufficient in that it contained no allegations of "the acts done or actually begun to be done in furtherance of the unlawful assembly." See *Territory of Hawaii v. Kaholokula, et al.*, *supra*, 37 Haw. at p. 642. It should be noted that the Supreme Court of Hawaii held also that a riot is an offense under the act though no order to disperse, by proclamation or otherwise, has been given or made. See *Id.* at pp. 638-9. Kaholokula and all of his co-defendants in the indictment of

malicious injury when a union man was accused of closing an irrigation ditch. The last two arrests were made when two union members were charged with pulling the ignition wires from the distributor of a supervisor's automobile.

See transcript in the cases at bar, pp. 363-4. Cf. p. 116 and pp. 131-2. Freitas' testimony at pp. 363-4 respecting the arrest of MacMasato Yamauchi seems to have been in error. See the indictments, Plaintiffs' Exhibit No. 6, which charge Yamauchi with offenses which took place on November 6, 1946. See also Plaintiffs' Exhibit No. 31, Freitas' examination of Yamauchi which recites the same date. The Yamauchi incident is discussed at a later point in this opinion.

October 30, 1946, except Pias, deceased, and four others, Matsui, Nishimura, Dondo Tomita and Yasunaga, were reindicted by the 1947 grand jury of the Circuit Court of the Second Circuit, at No. 2365, for breach of the unlawful assembly and riot statute in count 1, and for conspiracy to commit a felony, third degree, in count 2. Masao Sera was also named in the second indictment. It should be noted that there had been no remittitur by the Supreme Court to the Circuit Court in the Kaholokula case referred to before Kaholokula, his former co-defendants and one additional defendant, were indicted by the 1947 Maui County grand jury for offenses growing out of the Paia incident. These facts must be referred to again at a later point of this opinion. The prosecution of Kaholokula and his co-defendants under the new indictment has not been proceeded with because of the temporary restraint issued by this court at No. 836.

The Yamauchi Incident.

Mac Masato Yamauchi, a carpenter employed at the Pioneer Mill Company, Ltd. at Lahaina, was also charged with violation of the unlawful assembly and riot statute. See the two complaints against Yamauchi and others, Plaintiffs' Exhibit 5. Yamauchi's actions were a contributing, if not the primary, cause of an assault and battery upon certain other employees of Pioneer who were set upon by a large number of other strikers in order to prevent further irrigation from an irrigation ditch. The complaint states that the offenses occurred on November 6, 1946. Yamauchi and those who alleg-

edly acted under his orders were named by the 1946 Maui County grand jury in two indictments returned on December 12, 1946. The first indictment, numbered 2379, Plaintiffs' Exhibit No. 6, contained three counts, "Riot", "Conspiracy-Third Degree" and "Assault and Battery". The second indictment, numbered 2380 but also designated as Plaintiffs' Exhibit No. 6, contained similar counts. Yamauchi pleaded *nolle contendere* to the assault and battery charges, and the other charges, riot and conspiracy, were *nolle prossed*.

The Lanai Incidents.

While the Kaholokula case was pending in the Supreme Court of Hawaii there occurred the incidents on the Island of Lanai referred to in the complaint at our No. 828. The individual plaintiffs at No. 828, other than Kawano, were employed by the Hawaiian Pineapple Company at or near Lanai City, Maui County, at the times when the incidents occurred. We will deal immediately with that Lanai incident which occurred first.

The Hawaiian Pineapple Company owns the Island of Lanai. The Island is entirely populated by employees of the company and their families, totaling about 4000 persons. See "Hawaii", p. 11, published by the United States Department of the Interior, *supra*. The company maintains a wharf at Kaunapala Harbor about seven miles distant from Lanai City to the end that the pineapples harvested on its plantations in and about Lanai City may be shipped to market. Pineapples are brought from the fields in specially constructed bins ready to be

loaded on a pineapple barge when one is brought to dock. On the day of the incident, July 14, 1947, about eleven²⁶ bins of pineapples, picked before the strike on the plantations of the Hawaiian Pineapple Company and brought to Kaunapali Harbor, lay on the dock. The company intended to transship them to a barge which was about to be brought into the harbor. A white line, a kapu²⁷ line, had been painted on the land side of the road to designate the outer boundary of the company's property.²⁸ Kapu signs were posted along this line. About 3:00 P. M. there were fifteen or sixteen men near the wharf, sitting on the sea wall. About 3:30 P. M. truck loads of union men began to arrive at the wharf until there were about three hundred present. There was some picketing. About 4:00 P.M. the expected barge came in and was secured to the wharf. The picketing which had ceased temporarily began again headed by five union "picket policemen", one of whom was Diego Barbosa.²⁹ While this was going on employees of the company, who ordinarily

²⁶It should be noted that the customary load for a barge is 152 bins of pineapples which are usually shipped for canning within forty-eight hours after picking lest they turn sour.

²⁷The Hawaiian word kapu means "forbidden". See "Introduction to the Hawaiian Language". See note 12, *supra*.

²⁸See Defendants' Exhibits C-1, 2 and 5.

²⁹Sometimes referred to in the testimony as "Gigo". See for example p. 40 of the testimony before Young Wa, Acting Magistrate, designated in note 34, *infra*, as the "Lanai transcript."

worked in supervisory capacities and who were non-union men, began to take positions on and about the bins, obviously with the intention of loading the pineapples on the barge. Among these employees were Harrington and Johnson. Another supervisory employee, Fernandes, started to operate the crane.

Barbosa ran toward the pineapple bins and across the kapu line, signaling for the other men to follow him. All the men, as they crossed the kapu line, according to Freitas' testimony, yelled at the tops of their voices. Some of them mounted the bin on which Johnson and Harrington were working. Johnson escaped without injury but Harrington was punched and beaten about the head and body as was demonstrated by the motion picture film shown to this court.³⁰ The men who mounted the bins, broke them open and threw pineapples at the men on the tug and the barge. The supervisor, Fernandes, who had started to operate the crane, ran away pursued by at least fifteen men who punched at him. He was chased down a stairway to a lower portion of the wharf where he fell or jumped into the water. As he swam away his attackers threw pineapples at him, though none of these actually struck him. Another non-union employee, Charles Marquis,³¹ was also forced into the water but reached the protection of the barge. Freitas had only five police officers with him. He told Barbosa to call off his men, saying that the work would stop. Barbosa called the

³⁰Defendants' Exhibit E-1.

³¹Referred to in the transcript before this court as "Makees". See p. 355.

men back to the sea wall or road. The incident lasted about five minutes, the barge then leaving the pier.

Motion pictures were taken at the wharf by a police officer, by an engineer and draftsman employed by the Hawaiian Pineapple Company, and by a school principal. Stills were printed in Honolulu from the motion picture negatives. Some arrests for participation in the incident were made on the basis of reports by the police officers who were present and eleven persons, including Barbosa, were named in a criminal complaint, dated July 16, 1947, based on the unlawful assembly and riot act.³² On August 1, 1947, about two weeks after the incident, a complaint was filed against Agliam and fifty-one additional defendants.³³ This complaint also was based on the unlawful assembly and riot Act³⁴ and will be referred to hereinafter from time to time as the Agliam case. Before the preliminary hearing in

³²See Exhibit D attached to the complaint at our No. 828.

³³See item 5, par. 7, stipulation 4/23/48 at our No. 828.

³⁴See the complaint attached to the record of the proceedings before Young Wa, acting District Magistrate of the District of Lanai "On the Preliminary Hearing had by the Plaintiffs Agliam and Others . . .", admitted pursuant to the stipulation at No. 828, paragraph 7 (item 5) and paragraphs 8 and 9. We refer to this transcript as the "Lanai transcript".

the District Court³⁵ four persons were dropped³⁶ and after the preliminary hearing, the names of twelve more defendants were removed from the Agliam complaint.³⁷ The remaining thirty-six were held for action of the Maui County grand jury. The grand jury has not yet acted in respect to the case of Barbosa, et al., due to the restraining order issued by this court at No. 828, or in respect to the case of Agliam, et al.

Assistant Chief of Police Freitas testified on cross-examination in this court that a number of pictures were taken at the harbor both before and after the incident as well as during it. He was asked, "Isn't it true that a large number of pictures were taken after everything was pau [finished]"? He replied, "Yes, there were pictures taken afterwards." We find it to be a fact that a number of persons came to the scene presumably out of curiosity after the incident was over. Freitas testified that "all these pictures" were used in compiling the list of names in the complaint sworn to by him before the magistrate. [28] One individual, Aki, was present during the incident but took no part in it.

³⁵The District Court on occasion is a committing magistrate's court wherein defendants may be held for the Circuit Court. See Sections 9671-9688, Revised Laws of Hawaii 1945. The Circuit Court is the nisi prius or trial court which must sit with a jury in criminal cases unless a jury be waived. See Sections 9631-9657 and Section 10, 825, Revised Laws of Hawaii 1945.

³⁶See Lanai transcript, 8/6/47, p. 1.

³⁷Lanai transcript, 8/28/47, p. 126.

He was arrested nonetheless. He was not a member of the ILWU at the time. A police officer, Lieutenant Madeiros, told Aki that he was surprised that he was arrested at all as he was not a union man. Aki was quickly discharged from custody.

It will be observed that sixty-three persons were subjected to criminal process by reason of the Lanai incident and that only forty-seven of them were finally held for action of a grand jury. Again the law enforcement officers of Maui County threw a very wide net.³⁸ The Deputy County Attorney for Maui County as before instructed Freitas to cause the complaints to charge violations of the unlawful assembly and riot act.

Barbosa and the others named in the complaint, Exhibit D attached to the complaint at our No. 828, filed certain motions and challenges to the 1947 Maui County grand jury.³⁹ This matter must be referred to again at a later point in this opinion.

³⁸As to persons wrongfully arrested the case of Shigeto Minami may perhaps be deemed to be typical. Minami, who was working for the research department of the Hawaiian Pineapple Company, and was not a member of the union, albeit he ceased work on July 10, 1947 when the union men struck, went to Kaunapali Harbor from Lanai City to go swimming with some friends on the day of the incident, remaining there only until about one o'clock in the afternoon, leaving about three hours before the incident started. He seems to have been photographed by the police, was subsequently arrested under the complaint alleging unlawful assembly and riot and was compelled to make bail in the amount of \$100. After approximately five appearances before a magistrate he was discharged.

³⁹See par 10, stipulation, 4/23/48, at our No. 828.

The Kalua Incident at Lanai City

The second incident on the Island of Lanai⁴⁰ occurred early in the morning of July 15, 1947. Its victims were Jacob Kalua Nahinu and Sam Kalua.⁴¹ Both roomed in House No. 7 in Block 33, Lanai City, and were truck drivers [29] employed by the Hawaiian Pineapple Company. Neither had gone out on strike. Shortly after 5:30 a.m. twenty to twenty-five persons, most of whom must be assumed to have been strikers since they were headed by "union police" with arm bands, proceeded to administer a severe beating to Jacob and when his brother, Sam, attempted to rescue him, he too was beaten.⁴² Jacob was caught between the house and the communal washroom. The Kalua brothers were able to identify only five persons who were arrested on a complaint made the same day. The persons arrested were Abraham Makekau⁴³ and four others. They were committed to await action of the grand jury. This complaint⁴⁴ also was based upon the un-

⁴⁰The Island of Lanai lies off the larger Island of Maui and, as already stated, is included in Maui County.

⁴¹These two men are brothers albeit they possess different surnames. They will be referred to from time to time in this opinion as the "Kalua brothers."

⁴²See the pictures taken of Jacob following the beating. Defendants' Exhibit I, 1 and 2.

⁴³See Makekau's statement made before Assistant Chief of Police Freitas on July 15, 1947, Defendants' Exhibit N.

⁴⁴Attached to the amendments to the challenges and motions to the Maui County grand jury, as Exhibit G at our No. 828.

lawful assembly and riot act. The prosecution of Makekau and his co-defendants has not been proceeded with by reason of the restraint issued by this court at No. 828.

Makekau and his co-defendants joined with Barbosa and his co-defendants in filing the motions and challenges to the 1947 Maui County grand jury as mentioned in the last paragraph of the preceding sub-heading.

Incidents Occurring in and About the City and County of Honolulu During the Pineapple Workers' Strike

There was testimony that one Sibolboro and seven others were arrested for obstructing a highway in the City and County of Honolulu on July 13, 1947. Sibolboro lay down in front of a truck, preventing it from proceeding on the highway. He was sentenced to six months' imprisonment but sentence was suspended. Eighty-three other persons were also arrested as the result of another incident in the County of Honolulu on the same Sunday and charged [30] with obstructing a highway at Turner's Switch. These charges were later nolle prossed.⁴⁵

Excessive Bail

In numerous instances the bail required of the defendants, plaintiffs herein, in criminal proceed-

⁴⁵The defendants objected to the testimony referred to under this heading and, after it was presented, moved to strike it out. We will deny the motion to strike since we deem the evidence to be pertinent.

ings growing out of the strikes, seems to us to have been so large as to be excessive. Pedro De La Cruz testified that he was president of Local 152 and had the duty of making bail with union funds for union members charged with the violations of law hereinbefore referred to in this opinion. He testified that Makekau and the four others arrested with him and charged with unlawful assembly and riot were required to make bail in the amount of \$1,000 apiece;⁴⁶ that Diego Barbosa and one of the ten other persons arrested with him for violation of the unlawful assembly and riot act were required to give bail in the amount of \$1,000 apiece; three of them were granted bail in the amount of \$500 apiece; and the remaining defendants were granted bail in the amount of \$250 apiece.⁴⁷ It should be noted that Shigeto Minami, who had nothing to do with the Kamaulapau Harbor incident, save his appearance at the scene perhaps three hours before the incident occurred, was held in bail of \$100, though released after subsequent hearings.⁴⁸

Even in the Makekau case, growing out of the assaults on the brothers Kalua, bail set in the amount of \$1,000 a defendant seems too high. The requirement of bail in such an amount for an assault and battery would seem to be unusual even on the eastern and western seaboard of the United States. There is but little chance for a defendant

⁴⁶See transcript before this court at p. 138.

⁴⁷*Id.* pp. 139-140, 145-146.

⁴⁸*Id.* at p. 52. See note 38, *supra*.

under bail to escape from the Territory of Hawaii or even from Maui County by reason of geographical isolation. [31]

The Use of the Unlawful Assembly and Riot Statute

It will be observed that the unlawful assembly and riot statute has been extensively, and indeed almost continuously, invoked by the law enforcement officers of Maui County against members of the ILWU during the course of the sugar and pineapple strikes; indeed, on occasions and under circumstances, for example those in connection with the Kalua brothers and the Yamauchi incidents, when the invocation of the statute seems inappropriate. The record demonstrates a leaning on the part of the law enforcement authorities of Maui County toward the use of the unlawful assembly and riot act when a statute like the assault and battery act, Chapter 239, Sections 11050-60, Revised Laws of Hawaii 1945, would, we think, have been employed if the motive for prosecution had been only the maintenance of good order in the community and the punishment of minor law breakers. Certainly, the penalty provisions of Chapter 239 must be deemed to be adequate for those purposes.

Wendell F. Crockett, Esquire, the Deputy County Attorney of Maui County and a defendant at both Nos. 828 and 836, testified before this court. We found him to be a most credible and intelligent witness. He was asked⁴⁹ by the attorney for the plain-

⁴⁹Transcript at pp. 282-3.

tiffs, "In your experience of thirty years as deputy county attorney for the County of Maui, have you ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute?" He replied: "To my recollection except for the present cases, there was only one case prosecuted in the County of Maui for unlawful assembly, and that grew out of an alleged kidnapping that took place during a labor dispute." We have found but one reported case in which the unlawful assembly and riot act was invoked in a case which did not involve a labor dispute. This is *Republic of Hawaii v. Carvalho*, 10 Haw. 446, which involved a riot among Portuguese members of the island community. This case, as indicated, was [32] prior to annexation and occurred during the life of the Republic of Hawaii.

No evidence was offered by the defendants to rebut Mr. Crockett's testimony on this very important point. Since one of the major issues in the instant cases is the good faith of the prosecutions instituted against the individual plaintiffs by the Territory under the unlawful assembly and riot act, had rebutting testimony been available, assuredly it would have been brought forward by the able attorneys for the defendants; evidence, not only as to the unlawful assembly and riot act being employed against groups other than labor groups in Maui County but in any other part of the Territory of Hawaii as well. In the absence of such rebutting testimony we are entitled to find and we do find, that the unlawful assembly and riot act has been employed by the Territory only against labor

groups, in labor disputes, at least for the last three decades.

Mr. Crockett testified also that he would proceed with the prosecutions of the plaintiffs as soon as circumstances would enable him to do so.

THE LAW, SAVE THAT RELATING TO THE MOTIONS AND CHALLENGES TO THE JURY COMMISSIONERS AND GRAND JURIES OF MAUI COUNTY

The challenges to the grand jury commissioners and to the grand juries of Maui County, as we have said, will be treated under a later heading since these subjects are separated to a considerable degree from the facts and the law relating to the incidents hereinbefore referred to and to the unlawful assembly and riot act and the conspiracy statute of the Territory. We will deal first with our authority to sit as a three-judge court pursuant to the authority of revised Title 28, and then with the attacks on the constitutionality of the two territorial statutes last referred to. [33]

As to Our Authority to Sit as a Court of Three
Judges Under Section 2281 of Revised Title 28,
U. S. Code, or as a Court of Three Judges
Sitting En Banc

We state in limine that we are of the opinion that the provisions of revised Title 28, U. S. Code, effective September 1, 1948, are applicable in the cases at bar. See Section 38 of the Act of June 25, 1948, c. 646, Section 1 of which enacted revised Title 28. While it is true that the provisions of the revised

Title were not in effect at the time the suits at bar were filed or when they were heard, we deem this fact to be immaterial. It is important only that the provisions of revised Title 28 are in force at the time of our decision. We have functioned as a three-judge revised Title 28, Section 2281 court in adjudicating the issues presented by the pleadings and the evidence in the instant cases. Congress by enactment of revised Title 28 saw fit to change the status of the United States District Court for Hawaii while the present litigations were pending by enacting revised Title 28, Sections 451, 133 and 134 (a). The parties, however, cannot complain respecting the new enactment which changed the status of this court since they do not suffer “. . . loss of rights, interruption of jurisdiction, or prejudice . . .” in the pending matters. See Section 2 (b) of the Act of June 25, 1948, c. 646.

The parties in fact do not make any complaint respecting the changed status of this court, though their arguments, both written and oral, in large part have been based upon the provisions of the Judicial Code of 1911. We can function only pursuant to the powers conferred upon us by Congress and therefore we must decide the pending cases under the provisions of revised Title 28 if we are to make the decisions. A helpful analogy is supplied, we think, by those authorities which hold that procedural amendments are to be applied to pending cases. See *Schoen v. Mountain Producers Corporation*,* 3 Cir. F. 2d ; *McCullough v. [34] Vir-*

*No. 9651 decided November 9, 1948.

ginia, 172 U. S. 102; *State of Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U. S. 421, and *Hodges v. Snyder*, 261 U. S. 600. Cf. *Hallowell v. Commons*, 239 U. S. 506; *Railroad Co. v. Grant*, 98 U. S. 398, 401-402; *Fed. Res. Bank of Richmond v. Kalin*, 4 Cir., 77 F. 2d 50, 51-2; and *Link v. Rec'rs of Seaboard Ry. Co.*, 4 Cir., 73 F. 2d 149, 151. We can find no authority strictly in point.

The critical language of Section 2281 of revised Title 28,⁵⁰ states that no interlocutory injunction or final order restraining [36] the enforcement "of any

⁵⁰As follows:

"Section 2281. An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

See also Section 2283 as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

See also Section 2284 as follows:

"In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

"(1) The district judge to whom the application for injunction or other relief is presented shall con-

State statute" by "any officer of such State" shall be granted except "by a district court of three

stitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

"(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

"If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

"Such notice shall be given by registered mail by the clerk, and shall be complete on the mailing thereof.

"(3) In any such case in which the application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

"(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

judges" as provided by Section 2234. Cf. the provisions of Section 265 of the old Judicial Code.²¹ It

"(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

"A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days' notice served upon the attorney general of the State."

²¹As follows:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the

will be observed therefore that there are two barriers which must be cleared before the jurisdiction

United States, or to a circuit or district judge, and shall be heard and determined by three judges of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit; Provided, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit

of this court, sitting as a three-judge Section 2281 tribunal, becomes plain. The first is in the use of the word "State" in Section 2281 and in Sections 2283 and 2284. May it be said that the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii are statutes of a "State"⁵² or "State statutes" within the purview of the sections? The second barrier lies in the nature of the United States District Court for the District of Hawaii. Is it "a district court" within the applicable language of the statute?

We will discuss the second question first and are aided in determining it by additional pertinent sec-

shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

⁵²See the position taken in respect to this word in the dissenting opinion of Chief Judge Denman in *Mo Hock Ke Lok Po v. Stainback*, 74 F. Supp. 852, at pp. 861 et seq.

tions of revised Title 28. Section 451 provides, "As used in this title, the term 'court of the United States' includes the Supreme Court of the United States, . . . [and] district courts constituted by chapter 5 of this title, including the district courts of the United States for the districts of Hawaii and Puerto Rico . . ."; "The terms 'district court' and 'district court of the United States' mean the courts constituted by chapter 5 of this title"; and "The terms 'district' and 'judicial district' mean the districts enumerated in chapter 5 of this title." Turning to Chapter 5, Section 91, we find that the statute provides, "Hawaii [37] constitutes one judicial district which includes the Midway Islands, Wake Island . . ." Section 132 provides for the creation and composition of district courts and states, *inter alia*, that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district." See sub-paragraph (a). Section 133 states that "The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows: . . . Hawaii . . . 2 . . . [and that only] citizens of the Territory of Hawaii who have resided therein for at least three years next preceding shall be eligible for appointment as district judges for the district of Hawaii." Section 134 (a) provides that "The district judges, except in Hawaii and Puerto Rico, shall hold office during good behavior. The district judges in Hawaii and Puerto Rico shall hold office

for terms of six and eight years, respectively, and until their successors are appointed and qualified."

In view of the foregoing, whatever may have been the status of the district Court for Hawaii prior to September 1, 1948, the effective date of revised Title 28, there can be no doubt that the court is now "a district court of the United States" in all respects pertinent to the instant question and for the application of Sections 2281, 2283 and 2284. Cf. *Mookini v. United States*, 303 U. S. 201, 205; *Ex parte Collins*, 277 U. S. 565, 567, and *Phillips v. United States*, 312 U. S. 246, 248-254. Congress has seen fit to cover, co-ordinate and integrate the District Courts for Hawaii and Puerto Rico into the federal court system as far as this can be done without constitutional amendment. True, these district courts remain legislative tribunals created by Congress in the exercise of its "sovereign congressional faculty" under Article IV, Section 3 of the Constitution of the United States instead of "true United States courts" authorized by Article III. See *Balzac v. Porto Rico*, 258 U. S. 298, 312. No constitutional provision limits the co-ordination and integration here conceived of and made [38] operable by Congress. The District Court for Hawaii therefore must be held to be "a district court" within the purview of the sections of revised Title 28 referred to.

The second question, i.e., the effect to be attributed to the use of the word "State," remains for disposition, however. It is indeed a difficult one.

There is no doubt that in organizing the Territory of Hawaii Congress saw fit to give to the local government broad domestic powers separating its operations from those of the federal government within the Territory, and that it bestowed upon the Territory a form of organization more like that of a State than had previously been given to any other area.⁵³ See *Alesna* [39] v. *Rice*, D. C. Haw., 69 F.

⁵³See Defendants' Exhibit Q, the Message from the President, transmitting the Report of the Hawaiian Commission, 55th Cong. 3rd Sess. Senate Document No. 16, p. 162. "Report of the Committee on Judiciary," wherein it is stated in part, "Hawaii having been hitherto a single independent State, its courts have exercised much of the jurisdiction exercised by both the Federal and State Courts in this country. In this respect the Hawaiian courts have resembled somewhat the courts of the Territories of the United States, which, as a rule, have had much Federal jurisdiction, as well as jurisdiction of cases arising under the Territorial laws. It seems very desirable in the case of Hawaii to separate these jurisdictions, leaving all cases arising under the laws of the Territory to Territorial courts and transferring all jurisdiction of a Federal nature to a district court of the United States to be established for the Territory of Hawaii. This district court should have also the jurisdiction of a circuit court of the United States.

"There are many reasons which make this separation of jurisdictions desirable. The foreign shipping already calling at the ports of Hawaii, as well as the shipping from the United States is very extensive and is rapidly increasing. With the natural growth of commerce on the Pacific, and especially in view of the change in the ownership of the Philippines, the near completion of the Siberian Railway, and the projected Nicaraguan Canal, the shipping that will call at the Hawaiian Islands will undoubtedly

Supp. 897, 899, citing *People of Puerto Rico v. Shell Co.*, 302 U. S. 253. See also *Alcora v. Rice*, 74 F. Supp. 865. It is also clear that Congress

increase more rapidly in the future than it has increased in the past. This will give rise to many important admiralty cases in Hawaii, some of which may become matters of international interest.

"It is obviously very desirable that jurisdiction over such cases should be exercised by Federal judges. Again, in the event of war, Hawaii may become a center for the trial of prize cases, of which the Federal courts should have exclusive jurisdiction. By making the relations between the territorial courts of Hawaii and the Federal courts, as to appeals, removal of causes, etc., the same as the corresponding relations between the State and Federal courts, all cases of a local nature can be tried and determined finally in the islands, and thus the expense and delay of bringing such cases to the mainland, and possibly to Washington, a distance of 5,000 miles, will be avoided. (Emphasis added.)

"Very little change need be made in the organization of the territorial or local judiciary. The organization and procedure of the Hawaiian courts is already very similar to what is found in the United States. This has been the result of a growth of sixty years of constitutional government in Hawaii under American influences. The judiciary department, unlike the executive and legislative departments, has always been free from politics. The people of Hawaii have great confidence in their judiciary and have always looked to it as the one impregnable bulwark of their liberties. The last two sovereigns under the monarchy, who did so much to lower the standard of the executive and legislative departments, did not dare to encroach materially upon the judiciary department until the final attempt of the Queen, which resulted in the loss of her throne."

recognized the distinction between the territorial courts and the United States District Court for the Territory of Hawaii. See Section 86 of the Organic Act, as amended⁵⁴ by Section 8 of the Act of June 25, 1948, c. 646. As early as 1901 the Court of Appeals for the Ninth Circuit in *Wilder's S. S. Co. v. Hind*, 108 F. 113, 116, perceived that distinction, stating, "The system of courts created by the [Organic] Act for the Territory of Hawaii differs radically from the system of courts which congress had theretofore created for any of the territories. In no other territory has there been a division of jurisdiction between cases which properly belong to courts of the United States and other cases. Congress found in the republic of Hawaii a system of courts already established, whose jurisdiction was complete, and from the highest tribunal of which there was no appeal. To that system congress, by the act, added a district court, conferring upon it the jurisdiction which pertains to the district and circuit courts of the United States, and providing for removing to that court from the territorial

⁵⁴To read as follows:

"The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

The language quoted is in all pertinent respects identical with that which has always been included in Section 86 of the Organic Act. See 31 Stat. 158.

courts causes which under the removal acts were removable from a state court to a court of the United States.” See also *Ex parte Wilder’s Steamship Company*, 183 U. S. 545. It is interesting to note that the general principle established by *Wilder’s* case was early made applicable to [40] habeas corpus proceedings in the District Court of the Territory by a series of cases holding that the federal rule against interference with criminal proceedings in the Territorial Courts might prevent the issuance of the writ except in cases of peculiar urgency. See *In the matter of Marshall*, 1 D. C. Haw. 34, 37-42; *In the matter of Atcherley*, 3 D. C. Haw. 404; *Soga v. Jarrett*, 3 D. C. Haw. 502, 504; *In re Curran*, 4 D. C. Haw. 730, 738.

The language of Section 86 of the Organic Act as amended by Section 8 of the Act of June 25, 1948, c. 646, provides that, “The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several states shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii.”⁵⁵ seems to support the conclusion that a statute of Hawaii was intended by Congress to be treated as if it were a statute of a State. True, “removal of causes” is included in Section 86 and it is on this phraseology that the decision of the Court of Appeals for the Ninth Circuit in *Yeung v. Territory of Hawaii*, 132

⁵⁵Emphasis added. See note 54, *supra*.

F. 2d 374, can be bottomed. But the last phrase of Section 86, "other matters and proceedings," is as powerfully inclusive as if the word "all" had been expressly inserted before the word "other." If the laws of the United States are to govern in all matters, both procedural and jurisdictional, it surely was the intent of Congress to treat the United States District Court for Hawaii as if, procedurally and jurisdictionally, though within the framework of the Constitution, it were in fact a district Court of the United States, and also to treat the Territory of Hawaii insofar as its relations to that court are concerned as if it were in fact a State of the United States. If this be so it would follow that a statute passed by the Legislature of the Territory of Hawaii is to be tried and tested by a three-judge [41] Section 2281 court as if it were in fact a statute enacted by a State of the United States.

The Territory of Hawaii, like the Territory of Alaska, and perhaps in contradistinction to Puerto Rico, is a fully "organized" territory. Puerto Rico may possibly still retain a lingering status of a "possession" or quasi territory though this is to be doubted. See *Balzac v. Porto Rico*, *supra*, at p. 309. Cf. *Rassmussen v. United States*, 197 U. S. 516. See also *Dorr v. United States*, 195 U. S. 138, 148, and *Downes v. Bidwell*, 182 U. S. 244, 305, the concurring opinion of Mr. Justice White. See the provisions of the Organic Act of Puerto Rico, 48 U. S. C. A. Sections 731 et seq. Section 35 of the Organic Act of Puerto Rico as it stood prior to

the amendment effected by Section 21 of the Act of June 25, 1948, c. 646, was comparable to Section 86 of the Organic Act of Hawaii as it is now and as it was prior to amendment. We can find no valid basis of distinction between the decision of this court in the *Mo Hock Ke Lok Po v. Stainback*, 74 F. Supp. 852, and that of the Court of Appeals for the First Circuit in *Benedicto v. West India & Panama Telegraph Co.*, 256 F. 417, 418-9. But see *Munoz v. Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262, 264-267. Cf. *Sancho v. Bacardi Corporation of America*, 1 Cir., 109 F. 2d 57, modified and affirmed in part and reversed in part in 311 U. S. 150, 167. See also *Alaska v. Troy*, 258 U. S. 101, and *Dooley v. United States*, 183 U. S. 151. There is of course high authority for construing the word "territory" employed in a statute under some circumstances as if it were in fact the word "State." See the very recent decision of the Supreme Court in *Andres v. United States*, 333 U. S. 740, 745. See for example *United States v. Bevans*, 3 Wheat. 336, 385; *Talbott v. Silver Bow County*, 139 U. S. 438, 444; and *Wynne v. United States*, 217 U. S. 234. Cf. *Alesna v. Rice*, *supra*, and *Hall v. Hawaiian Pineapple Co.*, D. C. Haw., 72 F. Supp. 533, and of course, the *Mo Hock Ke Lok Po* decision itself. Compare the recent decision of the [42] Court of Appeals for the Ninth Circuit in *International Longshoremen's Union v. Wirtz*,* *supra*, affirming the decision of the

*See star note *supra*, following note 20.

Supreme Court of Hawaii in *I. L. W. U., et al. v. Wirtz, et al.*, 37 Haw. 404.

Much of course can be said upon the other side. We find three cases exceedingly troublesome; *Phillips v. United States*, *supra*, *Mookini v. United States*, *supra*, and *Ex parte Collins*, *supra*. The first decision, which is relied on strongly in Chief Judge Denman's dissenting opinion in the *Mo Hock Ke Lok Po* case points out that Section 266 of the old Judicial Code was not "a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such." 312 U. S. at p. 251. Mr. Justice Frankfurter then went on to say, "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy. This was the aim of Congress and this is the reconciling principle of the cases."

In the *Mookini* case the Supreme Court, by Mr. Chief Justice Hughes, decided that the provisions of Section 86 of the Organic Act of Hawaii, as it existed prior to the recent amendment, was not de-

cisive in requiring the Criminal Appeals Rules prescribed by the Supreme Court for district courts of the United States to be applied in the District Court of Hawaii. See 303 U. S. at p. 205. This decision must now be read in the light of the provisions of revised Title 28. As we have demonstrated Congress has seen fit to obliterate procedural and jurisdictional distinctions between the two [43] types of courts bestowing on the District Court of Hawaii insofar as Congress could by legislation the jurisdiction of a constitutional court. Congress had looked in this direction for some time having provided by Section 86 of the Organic Act, prior to the recent amendment, that the District Court of Hawaii "... shall have the jurisdiction of district courts of the United States, and shall proceed . . . in the same manner as a district court . . ."

In *Ex parte Collins*, *supra*, the Supreme Court, by Mr. Justice Brandeis, pointing out that the provisions of Section 266 were intended to restrain the enforcement "of a statute of a State," said that it "was intended to embrace a limited class of cases of special importance and requiring special treatment in the interest of the public." In footnote 1, 277 U. S. at p. 567, Mr. Justice Brandeis pointed out that the amendment to the Commerce Act, which later became Section 266, "... evidently recognizes the superior degree of consideration and sanction which should be given to a state statute and [Section 266] prevents hasty interference with the action of a sovereign state.", citing 45 Cong. Rec. 7253.

See also 277 U. S. at pp. 567-569. It is true that as used in the Constitution of the United States the word "state" has been held to mean "state" as a member of the Union. See *Hepburn v. Ellzey*, 2 Cranch 445, 451; *New Orleans v. Winter*, 1 Wheat. 91, 94, and *Hooe v. Jamieson*, 166 U. S. 395. Cf. *Enes v. Hoopai, Chief of Police*, 38 Haw. 126, 134-140.

The matter is further complicated by various appeal provisions. As we have pointed out, Section 86 of the Organic Act (see note 54, *supra*) requires that appeals from the District Court for Hawaii should be had and allowed to the Court of Appeals for the Ninth Circuit in the same manner as from district courts to the respective courts of appeals as provided by law. A proceeding under Section 2281 of revised Title 28, like one under Section 266 of the old Judicial Code, affords a direct appeal to the Supreme Court of the United States. [44] See Section 1253 of revised Title 28 providing for direct appeal to the Supreme Court from decisions of a three-judge court. But see also Section 1294 of revised Title 28 which provides for appeals from decisions of the district and territorial courts to the various courts of appeals. Section 128 of the old Judicial Code had ordained that the circuit courts of appeals should have jurisdiction to review by appeal final decisions in the United States District Courts for Hawaii and for Puerto Rico in all cases. This distinction had come into the law by the Act of February 13, 1925, 43 Stat. 936. Section 13 of

that Act provided expressly for the repeal of "So much of the Hawaiian Organic Act as amended by the Act of July 9, 1921 as permits a direct review by the Supreme Court of cases in the courts of Hawaii." The Act of July 9, 1921, 42 Stat. 108, 120, had reiterated the pertinent portions of an Act of March 3, 1909, 35 Stat. 838, which amended Section 86 of the Organic Act by permitting appeals and writs of error to be taken to the Supreme Court of the United States from the District Court for Hawaii ". . . in cases where appeals for writs of error are allowed from the district and circuit courts of the United States to the Supreme Court. . . ."

But Sections 1253 and 1294 of revised Title 28 seemingly have broadened the base for appeal to the Supreme Court. Section 1253 provides: "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." Section 1294, which must be read in connection with Section 1253, provides, insofar as is pertinent here, that "Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows: From a district court of the United States to the court of appeals for the circuit embracing the district;". As we have seen the District Court for the District [45] of Hawaii has been integrated into the federal

judicial system and has been made a district court of the United States insofar as that may be permissible under constitutional limitations. It remains a legislative and not a constitutional court but the procedure of appeal from its decisions is without any constitutional barrier. It follows, therefore, that appeals from the District Court for Hawaii go to the Court of Appeals for the Ninth Circuit except in those cases referred to in Section 1253 which permit direct appeal to the Supreme Court of the United States, viz., appeals from decisions of district courts of three judges. All other appeal procedures are wiped out and obliterated by the new Judicial Code which has amended Section 86 of the Organic Act. It would seem to have been the intention of Congress to authorize appeals from three-judge decisions of the District Court for Hawaii direct to the Supreme Court of the United States.

We conclude on consideration of all the foregoing that it was the intention of Congress by the enactment of the provisions of revised Title 28 referred to to award to statutes of Hawaii and to the United States District Court for the District of Hawaii status whereby the provisions of Section 2281 must be employed to test the constitutionality of territorial acts.

If, however, we are wrong in our conclusion that we are a properly constituted three-judge court qualified by the provisions of Section 2281 to hear and adjudicate the validity of the statutes involved in the instant cases, we think that we are authorized

to do so as the United States District Court for the District of Hawaii comprised of three judges qualified to sit therein and sitting en banc. As we stated in *Reinecke v. Loper*, D. C. Haw., 77 F. Supp. 333, in note 2 cited to the text, the present writer was designated to sit in the Court of Appeals for the Ninth Circuit by Mr. Chief Justice Vinson pursuant to Section 13⁵⁶ of the old [46] Judicial Code. Thereafter, he was designated by Senior United States Circuit Judge Francis A. Garrecht of the Ninth Circuit to serve temporarily in the District Court of the United States for the District of Hawaii pursuant to Section 14⁵⁷ of the former Judicial Code. This section provided: "Each district judge designated and assigned under the provisions of section 17 of this chapter may hold separately and at the same time a district court in the district or territory to which such judge is designated and assigned and discharge all the judicial duties of the district or territorial judge therein.⁵⁸ Each circuit judge designated and assigned to serve temporarily as a circuit judge in another circuit may and shall, during the period of his assignment, exercise all the judicial powers and discharge and perform all the judicial duties of and be subject to the same assignments of duties as the circuit judges of the circuit

⁵⁶See and compare Section 291 of revised Title 28.

⁵⁷See and compare Section 291 of revised Title 28 and in particular subparagraphs (c). Compare also Section 292 of revised Title 28.

⁵⁸Emphasis added.

to which he is designated and assigned for temporary duty." See also Sections 15, 17 and 18 of the old Judicial Code and Sections 291, 292, 295 and 296, constituting Chapter 13 of revised Title 28, under which we render our present decisions. It should be pointed out that the substance of the pertinent provisions of revised Title 28 is identical with that of the former statutes referred to. It follows, therefore, that the present writer by virtue of the two assignments and designations referred to is qualified to sit in and to determine the cases at bar as a judge sitting in the District Court for the District of Hawaii.

Judge George B. Harris, a District Judge for the Northern District of California, was also assigned and designated to sit in the District Court for the District of Hawaii by Senior United States Circuit Judge Garrecht pursuant to the provisions of Sections 13 and 14 of the former Judicial Code and sits and determines the instant cases pursuant to the provisions of revised Title 28 referred to in [47] the previous paragraph. Chief Judge Delbert E. Metzger was the Senior United States District Judge of the District Court for the District of Hawaii at the time the instant cases were heard.⁵⁹ All

⁵⁹It may be asserted that the District Court for Hawaii when it sits en banc may not be comprised of more than two judges since Section 133 of revised Title 28 provides, as did Section 86 of the Organic Act, for only two district judges in Hawaii. Such a limitation in our opinion does not exist. Section 132(b) of revised Title 28 provides, it is true, that

three judges, therefore, were and are qualified to sit in the instant cases and dispose of them as a court of the District Court of the District of Hawaii sitting en banc. In conclusion it should be pointed out that our decisions are unanimous. See *Commission v. Brashear Lines*, 312 U. S. 621, 626.

each district court shall consist of the district judges for the district in active service. But that subsection also provides that, “. . . judges designated or assigned shall be competent to sit as judges of the Court.” The two judges sitting in this case with the Chief Judge of the District Court were thus designated or assigned and comprise a court of three judges sitting en banc.

The other District Judge for Hawaii did not sit. This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the number of the court is not reduced below that legally required for the transaction of business. See 14 Am. Jur., Courts, Sec. 58, p. 282; 21 C.J.S., Courts, Sec. 183(b), p. 294, and the authorities cited therein. See also the opinion of Mr. Chief Justice Marshall in *Pollard v. Dwight*, 8 U.S. 251, 255-6; *Frank v. Bayuk*, 322 Pa. 282, 284, 185 A. 705, 706; *Zimmerman v. Pennsylvania R. Co.*, 293 Pa. 264, 266, 142 A. 220; *In re McCormick's Contested Election*, 281 Pa. 281, 285, 126 A. 568, 570; *Cowan v. Murch*, 97 Tenn. 590, 601, 37 S.W. 393, 396; and *Long v. State*, 59 Tex. Crim Rep. 103, 116, 127 S.W. 551, 558. By Section 132(c) of revised Title 28, a quorum of the United States District Court for the District of Hawaii consists of but one judge. Section 132(b) seems to dispose of any possible doubt respecting the authority of the three judges shown on this opinion to sit en banc in the instant cases and to adjudicate the issues presented.

The General Jurisdiction of the Court

In the decision of this court in *Mo Hock Ke Lok Po v. Stainback*, *supra*, 74 F. Supp. at p. 853, it was said: "The court sua sponte notes that the jurisdictional amount of [48] Section 41 (1) is required of all civil suits litigating constitutional questions except those stated in the succeeding 27 paragraphs [of Section 41]. No one of these gives the district courts jurisdiction of a deprivation of a right created by territorial law, though paragraph (14) gives such jurisdiction to such a deprivation by a state law . . . It thus seems that Congress intends that a territorial invasion of the right in controversy involving less than \$3,000 should have its litigation in the territorial courts." The court then reached the conclusion that unless appropriate amendments as to jurisdictional amounts were made the complaint would have to be dismissed as to the plaintiffs designated.

Whatever may have been the extent of the jurisdiction of the District Court for Hawaii at the time of the decision in the *Mo Hock Ke Lok Po* case, viz. on October 22, 1947, we entertain no doubt for the reasons stated under the last heading of this opinion that the jurisdiction of the District Court for Hawaii is for the purposes of the instant cases co-extensive with that of any district court of the United States; that of the District of Nevada, for example. It must be pointed out that R. S. Section 1979, 8 U. S. C. A. Section 43 provides that: "Every person who, under color of any statute, ordinance,

regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." See also R. S. Section 1977, 8 U. S. C. A. Section 41, which provides that: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject [49] to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Section 1343 of revised Title 28, treating of civil rights, provides: "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 47 of Title 8; (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 47 of Title 8 which he had knowledge were about to occur and power to prevent; [and in particular] (3) To re-

dress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." The suits at bar based on deprivation of civil rights, may be maintained without allegations of jurisdictional amounts as was required by old Section 24 (1), now Section 1331 of revised Title 28. See *Hague v. Committee for Industrial Organization*, 3 Cir., 101 F. 2d 774, 788, affirmed, though modified on other grounds, in *Hague v. C. I. O.*, 307 U. S. 496. Nor is citizenship a necessary factor. *Id.* pp. 526 and 531. We so hold in respect to both suits.

As we have stated, the two major industries of the Hawaiian Islands are the growing of sugar cane and pineapples and a very great part of these products moves in commerce to the United States mainland. It cannot be doubted that the interruption of equable and peaceful labor relations in the Territory by strikes in the sugar and pineapple industries will affect disastrously that flow of commerce. The provisions of the Labor Management Relations Act, 1947, 29 U. S. C. A. Sections 157-8, are applicable to the Territory of Hawaii. See Rules and Regulations Implementing [50] National Labor Relations Act amended by Labor Management Relations Act, 1947, Series 5, 29 U. S. C. A. Section 203.7, which states, "The term 'State' as used herein shall in-

clude . . . all . . . territories . . . of the United States." Upon analogy, therefore, to the doctrine enunciated by the Supreme Court in *A. F. of L. v. Watson*, 327 U. S. 582, 589-592, and in view of the findings hereinafter made respecting the impact of both the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii, respectively Chapters 277 and 243 of the Revised Laws of Hawaii 1945, and the manner of the statutes' enforcement on labor relations in the Territory, we conclude that this court has jurisdiction of the instant causes under Section 1337 of revised Title 28, U. S. Code, as well as under Section 1343 of that title.

As to the Constitutionality of the Unlawful Assembly and Riot Act of the Territory of Hawaii.

It will be borne in mind that the individual plaintiffs, Kaholokula and others, Rania aside, at No. 836, have been indicted for unlawful assembly and riot and conspiracy in the indictment No. 2365, and that the individual plaintiffs at No. 828, Kawano aside, are held on complaints based on the unlawful assembly and riot act. For these reasons the constitutionality of both statutes is attacked.

The unlawful assembly and riot act of the Territory of Hawaii, "Riots and Unlawful Assemblies," Chapter 277, as contained in the Revised Laws of Hawaii 1945, in pertinent part is set out in the footnote.⁶⁰ The origin of the law is shrouded in some ob-

⁶⁰Sec. 11570. "Where three or more persons are, of their own authority, assembled together with dis-

scurity. It came into written existence through the hands of the Honorable William Little Lee, the

turbance, tumult and violence, and striking terror or tending to strike terror into others, such meeting is an unlawful assembly within the meaning of the provisions of this chapter."

Sec. 11571. "A riot is where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others."

Sec. 11572. "Menacing language, or gestures, or show of weapons or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot."

Sec. 11573. "Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly."

Sec. 11574. "It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful."

Sec. 11575. "Persons present at a riot or unlawful assembly, and promoting the same or aiding, abetting, encouraging or countenancing the parties

first Chief Justice of the Supreme Court of Hawaii. On September 27, 1847, the King-appointed

concerned therein by words, signs, acts or otherwise, are themselves parties thereto and principals therein."

Sec. 11576. "In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of the order, except for keeping the peace, is thereby a party concerned in the unlawful assembly."

Sec. 11577. "Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse."

Sec. 11578. "Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruction or injury of any ship or vessel, or the furniture, apparel of cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars; and shall also be answerable to any person injured to the full amount of his damage."

Sec. 11579. "Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person, or in any other riot or unlawful assembly, not of the description designated in section 11578, shall be punished by a fine not exceeding one thousand dollars or by imprisonment at hard labor for not more than twenty years."

Sec. 11580. "If upon the trial of any person for being concerned in a riot or unlawful assembly as described in section 11579, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offense mentioned in section 11578, then the jury may return as their

House of Nobles and Representatives of Hawaii
by resolution authorized Mr. Lee to examine the laws

verdict that he is not guilty of the offense charged, but is guilty of such offense, and he may be punished accordingly."

Sec. 11581. "In case of any riot or unlawful assembly in any town, village or district, it shall be the duty of every district magistrate there resident, and also of the high sheriff, sheriff, and his deputies, and of the chief of police for the town, village or district to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Territory to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of the officers to command the assistance of all persons present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law."

Sec. 11582. "If any persons riotously or unlawfully assembled, who have been commanded to disperse by the high sheriff, sheriff, deputy sheriff, chief of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of the officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient forthwith to disperse and suppress the unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law."

Sec. 11583. "Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot or unlawful assembly, or to disperse any body of riotous men, the armed force shall obey such orders for suppressing the riot or tumult or for dispersing and arresting the persons who are committing any of the said offenses, as they may

of Hawaii and in effect to compile them.⁶¹ The unlawful assembly and riot act may perhaps have been in existence by edict promulgation prior to 1833 when King Kamehameha III came to the throne. The law appears in substance in the Penal Code of the Hawaiian Islands adopted by the House of Nobles and Representatives on June 21, 1850, known colloquially as "Lee's Compilation." In any event it is clear that the statute predates the

receive from the high sheriff, sheriff, or chief of police, and also such further orders as they may receive after they shall arrive at the place of the unlawful, riotous or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section."

Sec. 11584. "If by reason of the efforts made by any two or more such magistrates or officers, or by their direction, to disperse the unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of the magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the magistrates or officers, shall be held answerable therefor."

⁶¹See Journal House of Representatives, Hawaii, September 27, 1847, p. 15. See Defendants' Exhibit P, a memorandum prepared by Maude Jones, Archivist, Board of Commissioners of Public Archives.

Hawaiian Constitution of 1852 by at least two years.

The unlawful assembly and riot act of the Territory of Hawaii, Sections 11570-11584, Revised Laws of Hawaii 1945, bears a startling resemblance to the substance of the riot act of George I.⁶² In-

⁶²Geo. I, stat. 2, c. 5. Cf. also 36 Geo. III, c. 8, and discussion in Buckle, *History of Civilization in England*, Vol. I, 351, cited to the text in note 9 in *Bridges v. California*, 314 U. S. 252 at p. 265.

The statute of Geo. I is as follows:

“Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the publick peace, and the endangering of his Majesties person and government, and the same are yet continued and fomented by persons disaffected to his Majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his Majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his Majesty: Therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein, be it enacted by the Kings most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons, in this present Parliament assembled, and by the authority of the same, that: If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace, at any time after the last day of July in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any

deed, it may be fairly stated that [54] the George First statute is more favorable to the public and to civil rights than is the unlawful assembly and riot

city or town-corporate, where such assembly shall be, by proclamation to be made in the Kings name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, and the offenders therein shall be judged felons, and shall suffer death as in case of felony without benefit of clergy.

“II. And be it further enacted by the authority aforesaid, That the order and form of the proclamations that shall be made by the authority of this Act shall be as hereafter followeth, (that is to say) the justice of the peace, or other person authorized by this Act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command or cause to be commanded silence to be while proclamation is making and after that, shall openly and with loud voice make or cause to be made proclamation in this words or like in effect: Our sovereign lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George. for preventing tumults and riotous assemblies. God save the King.

“And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorized, empowered, and

act of Hawaii. It should be noted at the outset that the statute of George I deemed a gathering not to be dangerous [56] until twelve persons had assem-

required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid.

“III. And be it further enacted by the Authority aforesaid, That if such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, Sheriff or under-sheriff of the county where such assembly shall be, and also to and for every high or petty constable, and other peace-officer within such county, also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace-officer of any city or town-corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorized and empowered to command all his Majesties subjects of age and ability to be assisting to them therein) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesties justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if the persons so unlawfully, riotously, and tumultuously assem-

bled, whereas the territorial statute considers an assembly of "three or more persons" as containing a threat of danger. Both statutes seem to consider a

bled, or any of them, shall happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace-officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the Kings Majesty, his heirs and successors, as against all and every other person and persons of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid.

"IV. And be it further enacted by the authority aforesaid, That if any persons unlawfully, riotously and tumultuously assembled together, to the disturbance of the publick peace, shall unlawfully, and with force demolish or pull down, or begin to demolish or pull down any church or chapel, or any building for religious worship certified and registered according to the statute made in the first year of the reign of the late King William and Queen Mary, intituled, An Act for exempting their Majesties Protestant subjects dissenting from the Church of England from the penalties of certain laws, or any dwelling-house, barn, stable, or other out-house, that then every such demolishing, or pulling down, or beginning to demolish, or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy. [This section repealed 7 & 8 Geo. 4, c. 27, s. 1.]

gathering of persons "of their own authority," as contradistinguished from a gathering authorized by the sovereign, as menacing to public order. The

"V. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindring, or hurting such person or persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy: and that also every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindred, as aforesaid, shall likewise, in case they are any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so made, having knowledge of such lett or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.

"VI. And be it further enacted by the authority aforesaid, That if after the said last day of July one thousand seven hundred and fifteen, any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable or out-house, shall

statute of George the First required law enforcement officers to order a riotous crowd to disperse, and there had to be a failure on the part of the

be out of any City or Town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured, and damnified by such demolishing or pulling down wholly or in part; and such damages shall and may be recovered by action to be brought in any of his Majesty's Courts of Record at Westminster (wherein no essoin, protection, or wager of law, or any imparlance shall be allowed) by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs in such manner and form, and by such ways and means, as are provided by the statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the persons on whom any money recovered against any hundred by any party robbed, shall be levied: And in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house so damnified, shall be in any city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid (wherein no essoin, protection or wager of law, or any imparlance shall be allowed) against two or more inhabitants of such

people to obey this command before the severe penalties of the statute could be invoked. But the Supreme Court of Hawaii in Territory of Hawaii v.

city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town, at any Quarter-Sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied. [This section repealed 7 & 8 Geo. 4, c. 27, s. 1.]

“VII. And be it further enacted by the authority aforesaid. That this Act shall be openly read at every Quarter-Sessions, and at every leet or law-day.

“VIII. Provided always, That no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed.

“IX. And be it further enacted by the authority aforesaid, That the sheriffs and their deputies, stewards and their deputies, bailiffs of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty-constables, or other peace-officers and County, stewartry, city, or town, within that part of Great Britain called Scotland, shall have the same powers and authority for putting this present act in execution within Scotland, as the justices of the peace and other magistrates aforesaid, respectively have by virtue of this Act, within and

Joseph Kaholokula, et al., *supra*, 37 Haw. at p. 639, held that no command to disperse was necessary in order that the penalties prescribed by the law might be invoked. See in particular the Court's interpretation of Section 11581.⁶³ Under the statute

for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any of the offences aforementioned, within that part of Great Britain called Scotland, shall for such offense incur and suffer the pain of death and confiscation of moveables: And also that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or out-house, which shall be demolished or pulled down in whole or in part, within Scotland, by any person unlawfully, riotously or tumultuously assembled, shall and may be recovered by summary action, at the instance of the party aggrieved, his or her heirs, or executors, against the county, stewartry, city or borough respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head-borough of such county or stewartry respectively, and that in general, without mentioning their names and designations.

“X. Provided, and it is hereby declared, That this Act shall extend to all places for religious worship in that part of Great Britain called Scotland, which were tolerated by law, and where his Majesty King George, the Prince and Princes of Wales, and their issue are prayed for in express words.”

⁶³We note parenthetically that none of the officers present during the course of the Paia incident, probably twenty in number, gave any order requiring the strikers to disperse and that the Loitering statute, Section 11773, was read by Assistant Chief of Police Freitas.

of George I no felony was committed unless the rioters remained together for a period of an hour after an order to disperse was given. The territorial statute is not clear in respect [57] to the length of time that rioters must remain together. The crime under the ruling of the Supreme Court of Hawaii in the Kaholokula case seems to be completed *eo instanti* when three or more persons have assembled under the conditions set out in Section 11570. Section 11576, relating to the crowd remaining together after an order to disperse is given, therefore becomes of little relevancy.

Section 11570 of the unlawful assembly and riot act of Hawaii undertakes to define "an unlawful assembly." Any assembly of three or more persons "of their own authority" which meets or gathers with disturbance, tumult and violence "striking terror or tending to strike terror into others" is brought within the purview of Chapter 277. Any large group of persons (unless they be persons subject to discipline such as a company of soldiers turning out to fall in) ordinarily will meet or gather with some disturbance or tumult. Three persons in assembly, however, would have to exert their physical capabilities to a considerable degree to meet with appreciable disturbance or tumult. The word "violence" employed in the section surely has its ordinary legal meaning: "The abuse of force. That force which is employed against common right, against the laws, and against public liberty.", "Violence is synonomous with physical force . . .". Bou-

vier's Law Dictionary, Rawle's 3rd Revision. This much of the section is plain. But Section 11570 goes on to provide that the disturbance, tumult and violence must be one "striking terror or tending to strike terror into others * * *" The test here laid down is purely subjective and is very vague. An old fashioned charivari would come within the section's ambit. The test of reasonableness is absent from the statute.

But the definition is further complicated by the provisions of Section 11572 which contains a broader characterization of "an unlawful assembly" and also, as we shall see, of a "riot." Menacing language or menacing gestures, or show of weapons "or other signs or demonstrations [58] tending to excite terror in others" are stated to be "sufficient violence to characterize an unlawful assembly." A political meeting, the participants in which carry banners or transparencies attacking members of the opposition party and stating that they will be put out of public office, would lie within the purview of the words of the section last quoted. In short, any violence or attack, even a verbal or printed one, would make the members of a gathering liable to the penalties prescribed by the statute. Any gathering of pickets, or any picketing, however peaceful, might well "excite terror" in the mind of an employer of labor. Indeed the statute received such an interpretation in effect from the Circuit Court of the Second Circuit by Judge Wirtz, when he issued the *ex parte* injunction referred to

above. See note 21, *supra*. Section 11570 read in conjunction with Section 11572 is so vague that it necessarily fails to meet the test of certainty laid down by the Supreme Court of the United States in *Lanzetta v. New Jersey*, 306 U. S. 451, 453, and *United States v. Cohen Grocery Co.*, 255 U. S. 81.

Concerning Section 11571, which defines a "riot," the same lack of clarity is apparent for the section states nothing more than "... where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others." Again the test "striking terror or tending to strike terror into others," is necessarily one which must be purely subjective and hence objectionable. Moreover, Section 11572, as is the case in regard to the definition of "an unlawful assembly" under Section 11570, has been interpolated into Section 11571, "... any gestures ... tending to excite terror in others, are sufficient to characterize ... [a] riot."

Section 11573 deals with concurrence in intent. The provisions of this section are unusual. We shall not repeat them in detail in this opinion but we point out that the first part of the section provides that "Concurrence in [59] an intent of tumult and violence [to be read of course in connection with the definitions of Section 11570], and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot" It should be noted that a fair reading

of the statute requires the conclusion that "an intent of tumult and violence" is of itself "a sufficient joining in intent to constitute a riot." The phrase "and in any violent tumultuous act," separated in the text by commas, is plainly another and a separate ground upon which a "joining in intent to constitute a riot" may be found. We would agree that any violent tumultuous act on the part of a member of a mob could and should be sufficient to join the actor in the common unlawful intent to maintain a riot. But the section goes much further than this and, as we have indicated, makes a state of mind, without an overt act, illegal and subject to the penalties of the statute. Indeed, it is fair to say that Section 11573 supplies guilt by a kind of association. Guilt could be implied by the mere presence at the scene of any person. There is no reasonable certainty in the section.

Section 11574 states that "It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful." The second sentence provides that "The tumult and violence tending to excite terror characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be law-

ful." We do not know what this language means and counsel have suggested no helpful solution. Cf. the opinion of the Supreme Court of Hawaii in Kaholokula case, *supra*, 37 Haw. at pp. 628-9. The section seems to intend the effect, however, that if any terror be excited, a lawful meeting performing lawful acts [60] would fall within the ambit of Chapter 277 and the participants therein would become subject to the penalties of the statute.⁶⁴

Section 11575 deals with promoting or aiding a riot or unlawful assembly and states that any one present aiding, abetting, encouraging or "countenancing" the parties concerned therein by words, signs, acts, "or otherwise" are themselves principals therein. The verb "countenance" means "to give countenance to; to encourage; favor; approve."⁶⁵ It would necessarily follow that anyone whose mien or appearance was deemed to favor the assembly would himself be guilty as a principal.

Section 11576 provides simply that upon "an unlawful assembly" being ordered to disperse by anyone having legal authority to order it to disperse, any person voluntarily remaining in the assembly, "except for keeping the peace" is "... a party con-

⁶⁴Sections 11572-4 are said by the Supreme Court of Hawaii in the Kaholokula case, 37 Haw. at p. 628, to be "explanatory of statutory definitions of the offenses of unlawful assembly and riot..." But the sections cited seem to us to go much further than this explanation suggests.

⁶⁵Webster's New International Dictionary, 2nd Edition.

cerned in the unlawful assembly.” It was the obvious intent of the framers of this section to make anyone remaining on the scene, after an order to disperse was given, a participant in the crime and subject to the penalties of the act. But Section 11577 provides that “Every person present in an unlawful assembly is presumed to have notice of an order . . .” to disperse. Here guilt is created by presumption.

As we have indicated, Section 11572 provides that any menacing language or gestures or other signs or demonstrations tending to excite terror in others are sufficient to characterize an assembly as unlawful. Section 11579 provides that “Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person” shall be punished by a fine not exceeding \$1,000 or by imprisonment at hard labor for not more than twenty years. But the clause just [61] quoted is qualified by the phrase “not of the description designated in section 11578.” The provisions of Section 11572 would seem to make any person found guilty of unlawful assembly and riot (other than persons engaging in riots with the object of destruction of property designated in Section 11578) subject to a term of imprisonment at hard labor for not more than twenty years.⁶⁶ Cf. the comments of the Supreme Court of

⁶⁶See, however, the provisions of Section 10842 of the Revised Laws of Hawaii 1945, relating to indeterminate sentences.

Hawaii in the Kaholokula case, 37 Haw. at pp. 628-9.

No part of the text of Section 11580 need be repeated here. The Supreme Court of Hawaii seemed to entertain doubts as to its validity in the Kaholokula case. *Id.* at p. 641. The section's meaning turns on the interpretation of Section 11579 and we think the terms of Section 11580 are so indefinite and uncertain as to fall clearly within the ban of the decisions of the Supreme Court of the United States last cited herein. Indeed, as we have indicated, the whole statute falls within the interdiction. No part of it can be saved.

But Chapter 277 possesses other substantial vices. We entertain no doubt that the provisions of the First Amendment to the Constitution of the United States are applicable to the Territory of Hawaii. See *Farrington v. Tokushige*, 273 U. S. 284, 298-9. See the *Mo Hock Ke Lok Po* case. If not, it is clear that the provisions of the Fifth Amendment do apply despite the fact that Hawaii is a territory. We have likened Chapter 277 to the riot act of George the First. Like that statute it is a gross trespass on the rights of free speech and assembly as guaranteed by the Constitution of the United States. That the Supreme Court of the United States would so regard it we think it is implicit in the statements made by Mr. Justice Black in *Bridges v. California*, 314 U. S. 252, 265. He said specifically that “. . . the restrictions upon assembly⁹ then prevalent in England would have been

regarded [62] as measures which the Constitution prohibited the American Congress from passing." Note "9" cited to the text of Mr. Justice Black's opinion, as has been said, refers specifically to the riot act of George I. Compare the treatment by the Supreme Court of the United States⁶⁷ of like restrictions which have been attempted to be placed upon the rights guaranteed against encroachment by the first ten Amendments to the Constitution.

The statute sub judice must be judged upon its face. The case of *Thornhill v. Alabama*, 310 U. S. 88, is particularly apposite. The Alabama statute (Section 3448 of the State Code of 1923) prohibited loitering or picketing. The words of Mr. Justice Murphy require repetition. He said at pp. 97-8: "The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not

⁶⁷See *Bridges v. California*, *supra*; *Winters v. New York*, 333 U. S. 507; *Cantwell v. Connecticut*, 310 U. S. 296; *Hague v. C. I. O.*, 307 U. S. 496; *Grosjean v. American Press Co.*, 297 U. S. 233; *Near v. Minnesota*, 283 U. S. 697. Cf. *Cole v. Arkansas*, 333 U. S. 196.

have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. . . . Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. . . .”

The unlawful assembly and riot act of the Territory lays too great an emphasis on peace as distinguished from [63] freedom. It exalts order at the expense of the freedom of speech and assembly guaranteed by the First Amendment to the Constitution of the United States. It offers a fertile field for the operation of the agent provocateur who may disturb any public gathering with comparative impunity and cause the arrest of the most innocent participant who may have to stand trial under a theory of guilt by association and presumption.

Among the statute's disabilities are the very heavy penalties which it imposes. They seem out of proportion to the crimes. Compare the VIII Amendment to the Constitution of the United States which prohibits cruel and unusual punishments. While many of the States have not dissimilar statutes there is none which authorizes such a heavy penalty as the statute of Hawaii. Most of the statutes prescribe penalties, fines aside, of a few months', or a

year's, maximum imprisonment.⁶⁸ As Professor Chafee states in "Free Speech in the United States," it is unrealistic to hold "twenty years in prison before a speaker and call him free to speak . . ." ⁶⁹ It should be noted again that the very heavy penalty prescribed by Section 11579 first appeared in the statute in 1929, following the disastrous strike of Filipino laborers in Hawaii in 1924. See ante under the heading "The ILWU and the Labor Picture." See Laws of the Territory of Hawaii, 1929, Act 4, p. 3.

We have given careful consideration to the decision of the Supreme Court of Hawaii in the Kaholokula case and to Judge Peters' thoughtful opinion. The ruling is entitled to great weight. But we are a court of the United States construing provisions of the Federal Constitution. We are constrained to a conclusion respecting the unlawful assembly and riot act opposite to that expressed by the Supreme Court of Hawaii. We hold the statute to be unconstitutional for the reasons stated.

As to the Constitutionality of the Conspiracy
Statute of Hawaii

It will be borne in mind that the individual plaintiffs at No. 836, Kaholokula and others, Rania aside, have been indicted for conspiracy, third degree, in the indictment at No. 2365. Accordingly they attack the constitutionality of the conspiracy stat-

⁶⁸See Appendix III to Professor Zachariah Chafee's book, "Free Speech in the United States," at p. 575 et seq., Harvard University Press, 1941.

⁶⁹Id. at p. 10.

ute of the Territory of Hawaii.⁷⁰ The first part of Section 11120 (the example [65] aside) defines conspiracy. It provides that "A conspiracy is a mali-

⁷⁰Sec. 11120. "A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate any one thereto, or charge any one therewith; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another:

"For instance—A confederacy to commit murder, robbery, theft, burglary or any other offense prohibited by law; to prevent, obstruct, defeat or pervert the course of justice, by suborning a witness, tampering with jurors, or the like offenses; to groundlessly accuse any one of, and cause him to be prosecuted for, an offense; to charge any one with an offense, with the intent and for the purpose of extorting money from him; to falsely charge one with being the father of an illegitimate child; to cheat another by means of false tokens and pretenses; to manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to; to destroy a will and thereby prejudice the devisees; to prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him; to establish, manage or conduct a trust or monopoly in the purchase or sale of any commodity."

Sec. 11121. "Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than the one who originally takes part in forming the same."

Sec. 11122. "It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense."

Sec. 11123. "The act of each party to a conspiracy, in pursuance thereof, is the act of all."

cious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate anyone thereto, or charge anyone therewith; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another; . . .”

Sec. 11124. “Husband and wife cannot by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy.”

* * *

Sec. 11127. “On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendants shall be discharged, with or without costs, in the discretion of the court.”

Sec. 11128. “Conspiracy to commit, or to instigate to the commission of a felony; or to charge any one with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge or counterfeit or cheat to an amount exceeding one hundred dollars, is in the first degree and shall be punished by imprisonment at hard labor not more than ten years, or by fine not exceeding ten thousand dollars.”

Sec. 11129. “A conspiracy to establish, create, manage or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding one thousand dollars.”

Sec. 11130. “Conspiracy not appearing to be in the first or second degree, is in the third degree, and shall be punished by imprisonment of not exceeding one year and by fine not exceeding four hundred dollars.”

Sections 11125 and 11126, which relate to procedure, are not presently pertinent.

The conspiracy statute came into the written law of Hawaii in Lee's Compilation, Penal Code of June 21, 1850, in substance as it is today insofar as is pertinent in the instant cases though it, like the unlawful assembly and riot act, may have had earlier existence as a promulgated edict. We are of the opinion that the statute is so broad and vague as to fall within the prohibitions of the authorities cited under the previous heading. The constitutionality of the conspiracy statute has never been tested in this regard insofar as we can ascertain, albeit some of its terms (Section 5720, Revised Laws of Hawaii 1935 in *haec verba* with Section 11120 of Revised Laws of Hawaii 1945) are discussed and approved in *Territory v. Hart*, 35 Haw. 188, 195-197. Cf. *Territory v. Reyes*, 33 Haw. 180, and *The King v. Joe*, 8 Haw. 287, 288. Section 11120 as drawn is bad on its face; particularly in view of the last clause following the first semicolon as quoted in note 70, *supra*. The term "offense" is clarified, if clarification be necessary, by the provisions of Section 10601, contained in Chapter 222, dealing with "Definitions," Revised Laws of Hawaii 1945. See *Haas v. Henkel*, 216 U. S. 462, and *Hammerschmidt v. United States*, 265 U. S. 182. Cf. what was Section 37 of the Criminal Code, and since September 1, 1945, has become Section 371 of revised Title 18, U. S. Code. Section 10601 states that "The term 'offense,' as [66] used in the laws of the Territory, means the doing what a penal law forbids to be done, or omitting to

do what it commands." The clause of Section 11120 referred to makes two or more persons guilty of conspiracy if they concert together to do "... what is obviously and directly, wrongfully injurious to another . . ." and renders the section too vague to withstand attack. The word "wrongfully" is not a term of art in the criminal law. It means "In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice." Bouvier's Law Dictionary, Rawle's Third Revision. Cf. the term "Wrong," Black's Law Dictionary, Third Edition. The test supplied by the statute is, therefore, one of moral law, and two or more persons concerting together to effect a breach of that law or to commit a sin, transgression or misdeed injurious to another, or to fail to do some act which morality requires, that failure being injurious to another, would be guilty of the crime of conspiracy under the statute. This would be true despite the fact that the act done or omitted to be done is not defined in the Penal Code of Hawaii or in any criminal law of the Territory. Cf. the provisions of Section 10601. This portion of the statute clearly does not meet the test of certainty.

But if we are wrong in respect to the foregoing conclusion, it is clear nevertheless that that part of the section following the semi-colon and quoted above does not by any means describe a crime. This part of Section 11120 defines a conspiracy as the doing of that which "plainly and directly tends to excite or occasion offense, or what is obviously and

directly wrongfully injurious to another." If two or more persons were to agree to set up a grocery store (note that the agreement alone, without any overt act, would be sufficient to constitute the crime under Section 11122) in competition with the store of another, under a literal interpretation of Section 11120 they would be guilty of the crime of conspiracy under the statute since what they contemplated doing would be obviously and directly "injurious" to the rival merchant. True, the section employs the word "wrongfully" before the phrase "injurious to another," but the word "wrongfully" is not a term of art in the law and means simply, as we have already stated, "in a wrong manner; unjustly; in a manner contrary to the moral law, or to justice." Bouvier's Law Dictionary, Hawk's 3rd Revision. No common law definition and the statute in this respect. Cf. *The King v. Ayles*, 4 Haw. 259, 260-262. We think it is obvious therefore that Section 11120 fails to state a crime cognizable by any standard of Anglo-American law and for the reasons given is contrary to the guarantees of the Fifth Amendment limiting federal action or to those of the Fourteenth Amendment curtailing action by a State.

The example or explanation contained in the Act (see the second quoted paragraph of note 70, supra) beginning with the words, "For instance", demonstrates, we think, how far the statute actually goes. The explanation states that "A confederacy

... to prevent another, by indirect and sinister means, from exercising his trade and to impoverish him . . ." is a conspiracy. Picketing, however peaceful, would fall within this ban. The means would be "indirect" and, doubtless, would be considered by many to be "sinister". The adjective "sinister" is so little a term of art in the law and is so inadequate as a legal description that we cannot find it in any law dictionary. The Supreme Court of Hawaii in the Kahalokula case, 37 Haw. at pp. 625, 636, recognized the right of peaceful picketing, and also indicated, *Id.* at p. 642, that to deprive an individual of his right to work is to deprive him of "liberty" as employed in Section 11579 of the unlawful assembly and riot act. We agree with both positions and state that to deprive a man of his right to work does deprive him of a precious liberty. But we are concerned with a statute which by reason of its vagueness and uncertainty must be held to be unconstitutional in its entirety. We think it would be fruitless to discuss any other sections of the conspiracy statute, Chapter 243, under the circumstances. [68]

The Doctrine of Abstention.¹¹

If our ruling is correct that we are authorized to adjudicate the cases at bar as a three-judge court

¹¹The "doctrine of abstention" is referred to by Mr. Justice Frankfurter in *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496, 500-1, where citing such cases as *Beal v. Missouri Pacific R. Co.*, 312 U. S.

pursuant to Section 2281 of revised Title 28, we must deal with the doctrine of "abstention" and will do so shortly. If, on the other hand, we are not authorized by that statute to sit as such a court we adjudicate the instant disputes as the District Court for the District of Hawaii sitting en banc and for reasons stated immediately hereinafter the doctrine of abstention can exercise no effect on our decisions and decrees. Proceeding under the former theory first we will discuss the provisions of Section 2283⁷² of revised Title 28.

Section 2283 provides that "A court of the United States may not grant an injunction to stay a proceeding in a State court except as expressly authorized by Act of Congress, or where necessary aid of its jurisdiction, or to protect or effectuate its judgments." Compare the provisions of Section 86 of the Organic Act, as amended, and those of Section 265 of the old Judicial Code quoted in note

45; *Pennsylvania v. Williams*, 294 U. S. 176 and *Gilchrist v. Interborough Co.*, 279 U. S. 159, he said, "These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary."

⁷²Section 265 of the old Judicial Code provided: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

72 *supra*. Because of the provisions of Section 86 of the Organic Act, set out in note 54 *supra*, the mandate of Section 2283 of revised Title 28 must be imposed in respect to all "matters and proceedings" as between the District Court and the Territorial Courts of Hawaii. But the word "State" as employed in Section 2281 cannot have a different meaning than that which it enjoys when used in [69] Section 2283.⁷³ If the statutes of Hawaii are not "State" statutes the criminal proceedings complained of by the plaintiffs at our Nos. 828 and 836 are not proceedings in a "State court". The sections of the law referred to cannot be read both ways. They are not Janus-faced. If, therefore, the word "State" used in Section 2281 is not applicable to a statute of the Territory of Hawaii, Section 2283 cannot serve as a bar to action taken by this court to enjoin the criminal proceedings complained of in the cases at bar. We believe, however, for the reasons hereinbefore set out, that the Hawaiian statutes *sub judice* must be treated as if they were statutes of a State and that the provisions of Section 2283 are applicable.

It is clear that the doctrine of abstention from

⁷³Both are parts of Chapter 155 and are *pari materia*. See Reviser's Notes to Section 2283, revised Title 28, United States Code, p. 1910, Title 28 United States Code Congressional Service. The Reviser's Notes state: "The phrase 'in aid of its jurisdiction' was added to conform to Section 1651 of this title to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts."

action by injunction by a federal court to restrain proceedings in a State court embodied in Section 2283 of revised Title 28, does not go to the jurisdiction of the federal tribunal but is instead a rule of comity in the form of positive law. *Moran v. Sturges*, 154 U. S. 256; *Riggs v. Johnson County*, 6 Wall. 166. The matter was well put in *Feldman v. Pennroad Corporation*, D. C. Del., 60 F. Supp. 716, 718, affirmed 155 F. 2d 773, cert. den. 329 U. S. 808, wherein it was said "The statute [Section 265 of the old Judicial Code] is a limitation upon the equity powers of the federal courts. When application is made to a federal court to enjoin proceedings in a State court, the duty devolves upon the federal court to determine whether the petition has alleged facts for which relief is prohibited by the statute or whether the equities of the case require that an injunction issue despite the statutory limitation", citing *Smith v. Apple*, 264 U. S. 274. In *Keegan v. State of New Jersey*, 42 F. Supp. 922, 924, a three-judge Section 266 court stated: "The protection of personal rights [70] secured by the Constitution is as important as the protection of property rights secured by it. Section 265 of the Judicial Code, 28 U.S.C.A. Section 379, is not a jurisdictional statute, but one that merely goes to the equity presented by the bill. . . . A federal court therefore may exercise its jurisdiction to prevent the trial of a defendant by a state court where such a trial would invade constitutional rights. Such jurisdiction may be exercised by way of injunction

or in habeas corpus proceedings. In . . . [Truax v. Raich, 239 U. S. 33, 37-38], Mr. Justice Sutherland delivering the opinion of the Supreme Court stated: 'The due and orderly administration of justice in a state court is not to be thus interfered with save in rare cases where exceptional circumstances of peculiar urgency are shown to exist.' "

It has always been the case, however, that a federal court may enjoin proceedings in a State court if necessary to assert and protect a rightful jurisdiction. *Guaranty Trust Co. v. North Chicago St. R. Co.* (1904), 7 Cir., 130 F. 801, cert. den. 194 U. S. 638. Section 2283 of revised Title 28 provides that "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or when necessary in aid of its jurisdiction, or to protect or effectuate its judgments." There is no doubt that Congress set up the safeguards of Section 266 of the old Judicial Code and those of Section 2281 of revised Title 28 to guard against too frequent injunctions by the federal courts to restrain action by State officers acting under State statutes. In *Board of Education v. Barnette*, 319 U. S. 624, the Supreme Court held invalid, on an appeal from a three-judge Section 266 court, a regulation of a state board of education requiring children in public schools to salute the American flag. The regulation referred to must have had the effect of a statute otherwise the impanelment of a Section 266 court would have been held to have been

inappropriate. In *Grosjean* [71] v. *American Press Co.*, 297 U. S. 233, the Supreme Court struck down a statute which had for its purpose the licensing of the press by the imposition of a gross receipts tax for the privilege of engaging in the newspaper business. In *Hague v. C.I.O.*, *supra*, the Supreme Court held two ordinances requiring the licensing of public meetings in Jersey City void on their face and restrained their enforcement. In *Murdock v. Pennsylvania*, 319 U. S. 105, the Supreme Court, on certiorari to the Superior Court of Pennsylvania, held invalid a municipal ordinance requiring religious colporteurs to pay a license tax as a condition to the pursuit of their activities. These authorities show the general application of injunctive principles by courts of the United States to protect from state action rights guaranteed to the people by the First and the Fourteenth Amendments.

But in the decision of the Supreme Court in *Douglas v. Jeannette*, 319 U. S. 157, lies the difficulty in granting the relief which the plaintiffs seek by way of injunction from this court in order to restrain the Hawaiian authorities from proceeding with the criminal prosecutions. In the *Jeannette* case the Supreme Court had before it an unconstitutional ordinance (held to be such in *Murdock v. Pennsylvania*, *supra*, decided the same day), and the District Court of the United States for the Western District of Pennsylvania, by a single judge, had enjoined threatened criminal prosecutions thereunder. See 39 F. Supp. 32. Jurisdiction

in the case was based on Section 24 (14) of the old Judicial Code and the Civil Rights Acts. The Supreme Court by Mr. Chief Justice Stone said, 319 U. S. at pp. 163-164: "It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal [72] case as in a suit for an injunction. . . . Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger if irreparable injury 'both great and immediate.' ", citing, *inter alia*, *Spielman Motor Co. v. Dodge*, 295 U. S. 89, 95; *Beal v. Missouri Pacific R. Corp.*, 312 U. S. 45, 49, and *Williams v. Miller*, 317 U. S. 599.

In the *Spielman* case the Supreme Court refused to enjoin a criminal prosecution under Chapter 781 of the Laws of 1933 of New York, holding, by Mr. Chief Justice Hughes, that it must appear that

“The danger of irreparable loss is both great and immediate” and that the petitioner had failed to meet this test. In the *Beal* case the plaintiff railroad had sought an injunction from the District Court restraining State officers from enforcing the Nebraska Full Train Crew Law. The District Court had granted relief and the Court of Appeals for the Eighth Circuit had affirmed, 108 F. 2d 897. The Supreme Court reversed, 312 U. S. at p. 49, Mr. Justice Stone saying: “No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.”, citing, *inter alia*, *Terrace v. Thompson*, 263 U. S. 197, 214. Cf. *Truax v. Raich*, *supra*, and *Hague v. C.I.O.*, *supra*.

But in *A. F. of L. v. Watson*, *supra*, the Supreme Court, by Mr. Justice Douglas, pointed out that a district court of the United States might enjoin criminal prosecutions [73] based on an amendment to the Florida Constitution in effect outlawing closed-shop agreements if exceptional circumstances and great and immediate danger of irreparable loss to the petitioners, asserted by the pleadings were proved. Accordingly the judgment of the District Court was reversed and the cause remanded. Mr. Justice Douglas stated, 327 U. S. at p. 593: “But even though a district court has authority to hear

and decide the case on the merits, it should not invoke its powers unless those who seek its aid have a cause of action in equity. . . . The power of a court of equity to act is a discretionary one. . . . Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only 'to prevent irreparable injury which is clear and imminent . . . ' That is a strict test. But we think appellants satisfy it. We reach that conclusion on the basis of the allegations concerning the disruption of the collective bargaining processes and the injury to the unions and to the employers alike, if the closed-shop agreement is outlawed. As we have said, it is averred that there are about 500 contracts with Florida employers containing closed-shop agreement . . . " Cf. *Terrace v. Thompson* supra, 263 U. S. at p. 214, where Mr. Justice Butler stated, "But the legal remedy must be as complete, practical and efficient as that which equity could afford. . . . Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

In concluding that the decision of *A. F. of L. v. Watson* has a potent bearing on the disposition of the cases at [74] bar we are not unmindful of the fact that in the cited decision the Supreme Court ordered the cause remanded to the District Court with directions to retain the bill pending the final determination of designated questions of local law. The circumstances of *A. F. of L. v. Watson* are to be distinguished from the cases at bar on the ground that the Supreme Court of Hawaii in the *Kaholokula* case held the unlawful assembly and riot act to be constitutional. A most important question of local law therefore has already been decided unfavorably to the plaintiffs in the suits at bar. It should be pointed out, moreover, that the *Kaholokula* case could not be appealed to the Court of Appeals for the Ninth Circuit for the decision of the Supreme Court of Hawaii was rendered on an interlocutory appeal under the procedure prescribed by Section 9531, Revised Laws of Hawaii 1945.

Even if it were to be held, despite the circumstances, that the decision of the Supreme Court of Hawaii in the *Kaholokula* case had rendered the question of constitutionality of the unlawful assembly and riot act *res judicata* as to *Kaholokula* and his fellow defendants in the proceedings at No. 2657 in the Supreme Court of Hawaii, 37 Haw. 625, or that he or they could not contest the validity of the statute further because of the operation of a kind of estoppel, nonetheless other plaintiffs at

either No. 828 or No. 836 would not be so bound. The short of it is that the determination of local law which the Supreme Court of the United States ordered the District Court in *A. F. of L. v. Watson* to await and in the meantime to hold its hand, has already taken place in respect to the unlawful assembly and riot act. It follows that under the circumstances of the instant cases if our decision is to be effective we ourselves must pass on the validity of the unlawful assembly and riot act. While the conspiracy statute has not been tested by the Territorial Courts insofar as we are aware, since it forms the basis of only one count of the indictment at No. 2365 we have thought it proper for this court to determine [75] its constitutionality since it would be futile to cut the indictment in half or to truncate the instant proceedings.

We conclude that the prosecutions of the individual plaintiffs must be enjoined. Our conclusion is based not only on the decision of the Supreme Court in *A. F. of L. v. Watson* but also upon that in *Douglas v. Jeannette*.

First under *A. F. of L. v. Watson* our reasons are as follows: As we have stated, the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii are unconstitutional upon their face and the impact of the two statutes as employed, and as about to be employed, by the law enforcement authorities of the Territory, is such as to disrupt immediately any substantial possibility or opportunity for genuine collective bar-

gaining between the employers of the sugar and pineapple industries and their respective employees. As we have stated the growing of pineapples and the raising of sugar cane are the two major industries of the Territory. By the very existence of the two statutes referred to as well as by reason of the manner of their enforcement by the authorities of the Territory, the scales are weighted so heavily in favor of the employer and against the employee as to render fair collective bargaining a virtual impossibility under the Labor Management Relations Act, 1947, 29 U.S.C.A. Sections 157-8. That Act is applicable in the Territory of Hawaii as we have stated. The Hawaiian statutes effect indirectly the very result which the amendment to the Constitution of Florida under consideration in *A. F. of L. v. Watson* was designed to effect directly. A court of the United States has a duty to protect interstate commerce under Section 1337 of revised Title 28, U. S. Code. A court of the United States under Section 1343 of that Title also must protect civil rights as guaranteed by the Constitution and as defined by the Civil Rights Acts. A strike properly conducted is a legitimate weapon in the armory of labor. Peaceful assembly, peaceful picketing, and freedom of speech and of assembly are equally legitimate weapons of labor. Indeed, [76] freedom of speech and of assembly are rights guaranteed to all of us by the Constitution of the United States.

All collective bargaining in the Territory of Hawaii in our opinion is substantially affected by

the two statutes as well as by the prosecutions conducted or about to be carried on thereunder. Approximately thirty thousand members of the ILWU and the union itself necessarily feel the impact of the statutes as does each employer in the sugar and pineapple industries. All labor relations in the Islands are clouded by them. On the records presently before us we think it is fair to state that equable or amicable relations between employers and employees in the Territory of Hawaii are impossible while the statutes stand. The repercussions which arise from the enforcement of these statutes of the Territory are such as to cause great and irreparable harm and damage to all labor relations in Hawaii. The danger to labor relations within the Territory is great and immediate for if the full penalty of twenty years, or comparatively heavy sentences, be imposed after trial and conviction of any substantial number of the one hundred and twenty-seven plaintiffs at Nos. 828 and 836, labor on the Islands of Hawaii may, with a measure of justification, conclude that the processes of the law have been employed to reduce its members to virtual peonage. If this were to transpire, in our opinion, many years would pass before an adequate basis for collective bargaining could arise again. We go further and state that the two statutes are of such a nature as to affect not only labor but all other persons on the Islands and constitute a two-edged weapon with which the liberty of the individual, laboring man or capitalist, may be stricken down at any time.

But there are other and equally cogent reasons why the injunctions prayed for here must issue. As was pointed out by Mr. Chief Justice Stone in *Douglas v. Jeannette*, 319 U. S. at p. 163, no person is immune from prosecution in good faith. But good faith prosecution is an essential if a person is not to be deprived of constitutional rights. The [77] qualification of good faith in a prosecution runs through the line of cases applying the doctrine of abstention. See for example *Beal v. Missouri Pacific R. Co.*, *supra*, 312 U. S. at p. 49. The words in good faith are of great importance and were intended to draw a line between bona fide prosecutions embarked upon to uphold the law and prosecutions for some ulterior purpose or motive. The motive of the prosecutor is of course not relevant to the ordinary criminal proceeding; the material questions ordinarily are whether the defendant has committed the act alleged and whether it constitutes a crime. But prosecutions for motives other than the enforcement of the law have taken place on occasion and in connection with the exercise of the discretion of a district court of the United States to restrain such criminal actions good faith is material under the Civil Rights Acts.

In this connection the following facts among others in the instant cases are pertinent: (1) (a), the mass arrests, and the very broad, indeed, the too broad field, from which the police drew the defendants in the various criminal proceedings after both the Paia and the Kaumalapau Harbor

incidents, demonstrated by the fact that the names of sixteen persons were stricken out of one of the complaints and that of ninety-three arrests made on the Island of Oahu on July 13, 1947 only one person, viz. Sibolboro, was subjected to prosecution, all other complaints being nolle prossed; (b) the naming of persons as defendants in criminal proceedings from photographs taken by the police both prior and subsequent to the occurrence of the Kaumalapau Harbor incident; (c) the fact that the police made no arrests during the course of the Paia or Kaumalapau incidents; (d) the excessive bail required of many of the plaintiffs in the instant cases; (2) the fact that Assistant Chief of Police Freitas did not read the unlawful assembly and riot act to the strikers during the Paia or Kaumalapau incidents and did not contemplate the swearing out of a complaint against any of the plaintiffs under that statute [78] until directed to do so by the prosecuting officers of Maui County; (3) the repeated selection of the unlawful assembly and riot act with its heavy penalties as vehicles for the prosecution of comparatively minor infractions of the criminal laws; (4) the haste with which the prosecuting officers of Maui County procured the second indictment of Kaholokula and others when the first indictment was held invalid by the Supreme Court of Hawaii; (5) the fact, for we have found it to be a fact, that no one has been prosecuted under the unlawful assembly and riot act except in connection with labor disputes at any

time during the life of the Territory; and (6) the fact that the maximum penalty under the unlawful assembly and riot act was increased from five years' imprisonment to twenty years' imprisonment in 1929, following the Filipino workers' strike in 1924. In view of the foregoing we are brought to the conclusion that the threatened prosecutions of the plaintiffs are not "in good faith" within the purview of that requirement as laid down in *Douglas v. Jeannette*, and that the criminal proceedings complained of are being carried on for the purpose of attack upon a labor movement rather than for the ends of justice.

In making these statements we do not accuse the Attorney General of Hawaii or the prosecuting officers of Maui County in the instant cases of lack of honor or of personal integrity. The labor movement is an unpopular one in the Hawaiian Islands and these gentlemen do no more than reflect the mores of their time and their locality. There is no personal feeling in the attitude of these defendants and we do not doubt but that they are conscientiously animated by the high desire to maintain industrial prosperity in the Territory of Hawaii. The record seems to indicate beyond peradventure, however, that the unlawful assembly and riot act has been employed as a club to beat labor and that the conspiracy statute is an apt instrument to the same end. [79]

We find that the plaintiffs' remedy at law is not and cannot be "as complete, practical and efficient

as that which equity could afford." *Terrace v. Thompson*, *supra*, 263 U. S. at p. 214. The damage will be done to labor relations in the Territory of Hawaii and to the plaintiffs long before the individual cases, if the plaintiffs be found guilty, can reach the Court of Appeals for the Ninth Circuit. The danger of irreparable injury is both great and immediate. In this connection we point out again that the Supreme Court of Hawaii in the Kaholo-kula case has held the unlawful assembly and riot act to be constitutional upon interlocutory appeal, though it held the indictment insufficient for want of certainty. That decision will bind every court short of the Court of Appeals for the Ninth Circuit and an unconstitutional statute will stand as a basis for present and further prosecutions thereunder.

In holding that injunctions against prosecution of the individual plaintiffs under the unlawful assembly and riot act and the conspiracy statute must issue we do not ignore the fact that it is our duty to follow the interpretation of constitutionality imposed on the statute by the Supreme Court of Hawaii unless, in our opinion, that interpretation is clearly erroneous. After most careful consideration of both the statute and the decision do we conclude that the interpretation of the Supreme Court was erroneous and that the unlawful assembly and riot act is unconstitutional on its face. So regarding the statute and the decision of the Supreme Court of Hawaii it is our duty to proceed as the law requires of us.

Another matter requires brief discussion. Section 266 of the old Judicial Code provided, and Section 2284 (5)⁷⁴ of revised Title 28 provides, that a three-judge court before final hearing should hold its hand and stay proceedings before it if a suit has been brought in a State court of competent jurisdiction to test the statute complained of and the State court itself has stayed prosecution under the statute pending the completion of the test. See note 74 *supra*. See *Traffic Telephone Workers' Fed. of New Jersey v. Driscoll*, 72 F. Supp. 499. It will be observed at once that the provisions of Section 2284 (5) are literally inapplicable under the circumstances of the cases at bar for no stay of the threatened or pending criminal proceedings has issued from any court of the Territory of Hawaii. The statute, therefore, not being literally applicable, can have no effect beyond the rule of comity expressed by the Supreme Court of the United States in the Jeannette case.

⁷⁴In pertinent part as follows:

“A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.”

As to the Defense of Unclean Hands.

The defendants contend, as we apprehend their position, that the plaintiffs seek to obtain an injunction from this court, “. . . assuring them that their acts will not be indictable as unlawful assembly and riot, so that they may with greater comfort and impunity pursue a course of unlawful conduct.”⁷⁵ We think the defendants misapprehend the plaintiffs’ contentions and the point. Lest they also misunderstand the position of this court the statements which follow are necessary. We do not condone or attempt in any manner to palliate the illegal conduct of the strikers, plaintiffs in these proceedings. But we are required to discharge our duty and we are of the opinion that that duty requires us to enjoin the prosecutions of the plaintiffs under the statutes designated for the reasons given. The doctrine of unclean hands is inapplicable here. If it were otherwise no one who had infringed an unconstitutional statute, no matter how irreparable the damage resulting from the prosecution and no matter how great and imminent the [81] dangers inherent in the statute’s enforcement, could cause a district court of the United States to enjoin prosecution thereunder. The application of the doctrine of unclean hands under the theory enunciated by the defendants would have driven the plaintiffs out of court in *A. F. of L. v. Watson* and would have had a like effect in *Traffic Telephone Workers’ Fed. of New Jersey v. Driscoll*, *supra*.

⁷⁵Defendants’ brief p. 96.

If our decision in the instant cases is upheld there remains in the armory of the Territory of Hawaii numerous criminal statutes of the kind well known to the States of the United States and adequate for the punishment of lawbreakers.

THE ATTACK ON THE JURY COMMISSIONERS AND ON THE GRAND JURIES OF MAUI COUNTY.

As to the Right of Kaholokula, et al. to Attack the Indictment Handed Down by the 1947 Maui County Grand Jury.

The complaint for violation of the unlawful assembly and riot statute against Agliam and his co-defendants was dated August 1, 1947, and Agliam and those named in the complaint with him were held for action of the grand jury on September 16, 1947. As we have stated Agliam and his co-defendants were joined as plaintiffs at No. 828 by stipulation and an appropriate order thereon. Barbosa and his co-defendants were named in a complaint based on violations of the unlawful assembly and riot act, dated July 16, 1947. Makekau and his co-defendants were named in a complaint similarly based, dated July 15, 1947. Makekau, et al., and Barbosa, et al., filed motions and challenges to the jury commissioners and to the 1947 grand jury of Maui County at Nos. 2412 and 2413 respectively in the Circuit Court of the Second Circuit of the Territory of Hawaii. The matters raised by the motions and challenges to the jury commissioners and

to the 1947 Maui County grand jury were decided by Judge Cristy on September 17, 1947, [82] while the case of Kaholokula, et al., No. 2657 in the Supreme Court of Hawaii, 37 Haw. 625, decided November 26, 1947, was still before that Court. As we have said the constitutionality and the sufficiency of the indictment handed down by the Maui County grand jury on October 30, 1946, Plaintiffs' Exhibit No. 9, were tested by the Supreme Court in the cited case. The Supreme Court of the Territory held the unlawful assembly and riot act to be constitutional but the indictment was deemed to be insufficient in that specific illegal acts of the individuals were not described therein. As has been stated Kaholokula and certain others, plaintiffs at No. 836, had been indicted by reason of the Paia incident. Kaholokula and the other defendants indicted with him made no attack on the jury commissioners and did not challenge the 1947 Maui County grand jury. They do presently attack, by the allegations of the complaint at No. 836, both the jury commissioners of Maui County and the methods used to select grand juries in that county. They offer in support of their contentions the record made before Judge Cristy (sitting vice Judge Wirtz in the Circuit Court of the Second Circuit) under the motions and challenges of Makekau, et al., and Barbosa, et al.⁷⁶ The evidence contained in

⁷⁶Pursuant to paragraph 11, stipulation 4/23/48, at our No. 828, and also paragraph 9, stipulation 4/23/48 at our No. 836.

that record will be discussed hereinafter. The points raised are substantially those set up in the complaints at our Nos. 828 and 836. The motions and challenges of Makekau, et al., and Barbosa, et al., were filed in the Second Circuit Court on or about July 28, 1947 and were subsequently amended.⁷⁷

The defendants point out that when Judge Cristy's designation was made by the Supreme Court to the Second Circuit Court, to the end that he could hear the motions and challenges referred to, it was apparent that there were involved in the Kaumalapau Harbor incident not only [83] Makekau and those charged with him but also Barbosa and his co-defendants. This, say the defendants in the cases at bar, is "the very evident reason why the order of the Supreme Court included authorization to Judge Cristy to hear supplementary challenges and why Judge Cristy in disposing of the motions and challenges on September 18, 1947 stated that his rulings would apply to any other case lying before the grand jury."⁷⁸ But the case of Kaholokula, et al., was not then lying before a grand jury. The 1946 Maui County grand jury had handed down a true bill against Kaholokula and his co-defendants on October 30, 1946, Plaintiffs' Exhibit No. 9. Moreover, if Kaholokula,

⁷⁷We will discuss the challenges and motions as amended. Differentiation between the original motions and charges and the amendments is unnecessary and would be unprofitable.

⁷⁸See transcript of hearings before Judge Cristy p. 561.

and his co-defendants under the indictment of October 30, 1946, believed, as they apparently did, that the unlawful assembly and riot statute would be declared unconstitutional, or that the indictment would be found to be insufficient as actually transpired, there was no reason why they should have challenged the 1947 Maui County grand jury. Actually the earlier indictment had been found by the 1946 Maui County grand jury and that jury was *functus officio*. Whether or not the indictment was held to be insufficient, the life of the 1947 grand jury would expire on January 12, 1948.⁷⁹

The Kaholokula case was decided by the Supreme Court on November 26, 1947. The Territory had twenty days after the opinion was announced in which to petition for rehearing.⁸⁰ The time for filing a petition for rehearing expired therefore on December 17, 1947. But the 1947 Maui County grand jury met on December 2, 1947 and indicted Kaholokula again and with him seventy-four other persons in indictment No. 2365, including one individual not designated in the earlier indictment, Plaintiffs' Exhibit [84] No. 9. The later indictment, No. 2365, Exhibit E to the complaint at our No. 836,

⁷⁹See Section 9638, Revised Laws of Hawaii 1945. The life of the grand jury expires with the end of the term and the new term commenced in the Second Circuit on the second Monday in January, 1948, viz. January 12, 1948. See Section 9802 of the Revised Laws of Hawaii 1945.

⁸⁰See Rule 5 of the Supreme Court of Hawaii. See 36 Haw. at p. 756.

contains not only a count based on the unlawful assembly and riot act but also a count bottomed on conspiracy, third degree.⁸¹ At the time the indictment, No. 2365, was returned by the 1947 grand jury there had been no remittitur by the Supreme Court to the Second Circuit Court as has been said. The defendants' brief⁸² states in regard to this point, "The grand jury undoubtedly had a right to consider and to act upon the case, but were the plaintiffs bound to take notice that they would do so? That is the issue. We cannot foretell the ruling of the territorial court thereon, and it is not material here; they [the defendants] either were bound to take notice that the grand jury would consider the case and waived their opportunity [to challenge], or were not bound to take notice of it and can still present, by plea or motion on arraignment all contentions based on federal rights." The defendants in the instant cases cite *Territory v. Ferris*, 15 Haw. 139, for comparison. The cited case holds that a defendant charged with murder waives his right to challenge the grand jury if he does not do so prior to the time it retires even though he is held in jail at the time. Section 9812, Revised Laws of Hawaii 1945, provides that any person "held to answer a charge for a criminal offense" may challenge the panel before the grand jury is sworn. The grand jury is impaneled and sworn at

⁸¹Pursuant to Sections 11120-11130 of the Revised Laws of Hawaii 1945.

⁸²At p. 138.

the opening of the term.⁸³ The 1947 Maui grand jury could not have come into office until January 13, 1947, the second Monday in January.

Paragraph "F. Challenges," of Rule 18 of the Rules of the Supreme Court⁸⁴ as amended February 14 and [85] March 27, 1947,⁸⁵ provides, "Before the grand jury retires, . . . any person held to answer a charge for a criminal offense may challenge the panel or an individual juror for cause to be assigned to the court. All such challenges shall be tried and determined by the court." We think that the word "retires" as used in the Supreme Court rule means the first retirement by the newly impaneled grand jury after it has been charged by the court. See Section 9811 of the Revised Laws of Hawaii 1945. See such cases as *Commonwealth v. Smith*, 9 Mass. 107, and *People v. Jewett*, 3 Wend. (N. Y.) 314. *Territory v. Ferris*, *supra*, is

⁸³Sections 9810-2 of the Revised Laws of Hawaii 1945.

⁸⁴See item 7, paragraph 7, stipulation filed April 23, 1948, in No. 828, and item 3, paragraph 7, stipulation filed April 23, 1948, in No. 836. Cf. 36 Haw. at p. 763.

Section 9603 of the Revised Laws of Hawaii 1945 provides that the Supreme Court shall have "general superintendence of all courts of inferior jurisdiction. . . ." See also Section 83 of the Organic Act, 48 U.S.C.A. § 635.

⁸⁵The changes effected by the amendments seem immaterial insofar as the instant question is concerned. See Rule 18 of the Supreme Court prior to the stated amendments.

silent on this point, and we can find no pertinent Territorial authority. If we are correct in this ruling the opportunity of Kaholokula and his co-defendants to challenge the 1947 grand jury either under Section 9812 or under Rule 18 of the Supreme Court Rules elapsed long before December 2, 1947 when the indictment, No. 2365, was handed down. A chance to challenge the individual grand juror's competency as distinguished from irregularity of the drawing of the grand jury, still remained. Questions of competency, as distinguished from questions of regularity in the drawing of the grand jury, could be presented on arraignment under the indictment. Cf. *Territory v. Scully*, 22 Haw. 618, 632, explaining *Territory v. Ferris*, *supra*. In the *Scully* case it was held that a motion to quash an indictment on the ground of irregularities in selecting the list of persons to act as grand jurors, must be made before the jury was sworn. In *Territory v. Braly*, 29 Haw. 7, 8-10, the Supreme Court of the Territory considered on a plea of abatement a challenge based on alleged failure to apportion properly the citizenry for grand jury service among several precincts but the court's decision was based in fact upon the conclusion that no abuse of discretion had been demonstrated. [86]

The defendants urge that under the rule of *Carter v. Texas*, 177 U. S. 442, dealing with the exclusion by a Texas court of members of the African race from a grand jury, rights guaranteed by the

Constitution of the United States to the plaintiffs in the instant cases could be preserved by a motion to quash the indictment on arraignment. Cf. *Territory v. Ferris*, *supra*. But this raises a substantial federal question which, however, melts into the major contentions of the plaintiffs in the instant cases that they have been denied their constitutional rights.

We are of the opinion that the defendants named in the indictment No. 2365 did not have a fair opportunity⁸⁶ to challenge the 1947 Maui County grand jury and, as we have stated, had no substantial reason for believing that that grand jury would indict them on December 2, 1947; that their objections to the jury commissioners and to the constituency of the 1947 grand jury must be weighed and considered. The question then becomes: Shall this court consider on behalf of Kaho-lokula and his co-defendants under indictment No. 2365 the motions and challenges, filed by Makekau and Barbosa in the Second Circuit Court which have been made part of the records of the cases at bar by the stipulations of the parties?⁸⁷

⁸⁶As appears from the defendants' brief at p. 137: "In the arguments before the trial we frankly stated to this court that we do not know whether the plaintiffs in Civil No. 836 have had opportunity to challenge the 1947 grand jury."

⁸⁷See paragraph 11 of the stipulation of April 23, 1948, at No. 828, and paragraph 9 of the like stipulation at No. 836. Each pertinent paragraph is as follows: "It is stipulated that the record of the proceedings before the Honorable A. M. Cristy,

The defendants insist that all the pertinent evidence on this issue should be stricken out at both numbers and that this court may not consider it. They contend that we do not have the jurisdiction, i. e., power, to determine the issue whether a grand jury of the Territory has been properly [87] constituted even if it has been selected in a manner clearly prohibited by the Constitution of the United States. Cf. *Cobbledick v. United States*, 309 U. S. 323. The defendants endeavor to draw an analogy helpful to them from the federal statute relating to the removal of civil rights cases, Section 31 of the old Judicial Code, presently Section 1443 of revised Title 28, citing *Kaizo v. Henry*, 211 U. S. 146, 148, a case arising in the Territory of Hawaii, and *Andrews v. Swartz*, 156 U. S. 272, 276. It is doubtful if the cited cases retain full authority to-day in view of *Johnson v. Zerbst*, 304 U. S. 458, 468, wherein the Supreme Court held that a trial court would lose jurisdiction, i. e., the power, to try a criminal indictment, if the defendant was denied his constitutional right to assistance of counsel under the Sixth Amendment. It is the law, however, that civil rights cases may not be removed to the

including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived." See note 76 *supra*.

federal court unless the denial of civil rights occurs by reason of provisions of a state constitution or statute. *Kentucky v. Powers*, 201 U. S. 1, 30-1; *Strauder v. West Virginia*, 100 U. S. 303, 309; and *Virginia v. Rives* (Ex parte Virginia), Id. pp. 313, 321.

But assuming, as we must by reason of Section 86 of the Organic Act, as amended, that the Territory of Hawaii stands in the same position to the United States as a State insofar as removal of causes is concerned, we are of the opinion that decisions controlling the removal of civil rights cases to the federal courts nonetheless are not persuasive here. The question presented is not whether the case of the Territory v. Kaholokula, et al., may be removed to the United States District Court for the District of Hawaii, but whether in a suit based upon the Civil Rights Acts this court may consider whether Kaholokula and his co-defendants, plaintiffs at No. 836, have been deprived of rights guaranteed to them by the Constitution of the United States by reason of the methods employed in the selection of the 1947 Maui County grand jury. We are of the opinion that the latter question is within the ambit of the powers conferred upon a district court of the United States by [88] Section 1343 of revised Title 28. See also R. S. Sections 1977 and 1979. The question before us is not how might removal be accomplished but whether the plaintiffs are being deprived of their civil rights. The question at bottom therefore is the same as that previ-

ously decided by us. But even if it were not, we nonetheless sit as a court of equity. It is well established that a court of equity, having acquired jurisdiction on adequate grounds should determine all material issues. Our decision should not be truncated. Accordingly, we hold that it is proper for this court to consider the pertinent evidence stipulated into the records at both numbers and to adjudicate the issue involved.

The Evidence Produced on the Motions and Challenges of Makekau and Others and Barbosa and Others to the Jury Commissioners and to the 1947 Maui County Grand Jury.

We state preliminarily that the provisions of the law of the Territory of Hawaii relating to "Jurors" are to be found in Sections 9791 to 9813, inclusive, of the Revised Laws of Hawaii 1945, as amended, and in Section 83 of the Organic Act, 48 U.S.C.A. Section 635. We shall not repeat all the provisions of the statutes but we point out that Section 9800 of the Revised Laws of Hawaii 1945 stated in pertinent part "That the jury commission of each circuit shall in each year make and file with the clerk of the circuit court at least ten days before the next term of court two certified separate lists of citizens to serve respectively as grand and trial jurors in the circuit court for the ensuing year. It shall select and list the names of one hundred citizens as trial jurors and fifty citizens as grand jurors . . .", and "All of such selections shall be

citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt under the provisions of this chapter. If practicable, no person shall be selected who has served as a juror or grand juror within one year. [89] All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens, with a view to obtain lists representative of the qualified citizenry of each circuit." The last sentence quoted was amended by L. 1945, c. 163, s. 1, (Section 9800.01) to provide that "No person shall be selected and listed as a grand juror who had been so selected and listed within one year . . ." Section 2 of the statute last designated also added a requirement of three years residence in the Territory, amending Section 9791 of the Revised Laws of Hawaii 1945 to that extent. Section 9791 need not be quoted here. It is sufficient to state that it embodies in substance, the amending residence qualification aside, the provisions of Section 83 of the Organic Act, including those relating to the ability of the juror to speak English. Section 9803 provides for the drawing of the grand jury panel by the clerk of the court by lot in the usual fashion; that is to say the fifty names on the list are put into the "grand jury box" and from these names the clerk selects ". . . not less than thirteen nor more than twenty-three persons to serve as grand jurors . . ." The 1947 grand jury consisted of twenty-one persons so selected. They are the de-

fendants named as grand jurors in the complaints at Nos. 828 and 836.

It will be noted upon an examination of the testimony before this court, from the transcript of the hearings before Judge Cristy and also from a number of the exhibits that the terms "list", "grand jury", "grand jury as a whole", "panel" and "array" have been employed on occasion in a manner which creates some confusion. The three terms first quoted were generally employed to designate the list of fifty persons selected by the jury commissioners for grand jury service. The terms "panel" or "array" seemingly were used on most occasions to designate the twenty-one grand jurors drawn by lot by the clerk of the court from the list of fifty names selected by the jury commission; for example, the grand jurors named as [90] defendants in the instant occasion. Cf. the respective definitions of "panel" and "array", Bouvier's Law Dictionary, Rawle's Third Revision. In at least two instances, however, the word "panel" was used where the term "list" would have been more appropriate. See Movants' Exhibit No. 15 in the proceedings before Judge Cristy, referred to hereinafter. See also Plaintiffs' Exhibit 26.

The evidence produced on the challenges to the grand jury by Makekau, et al., and Barbosa, et al., in the Circuit Court of the Second Circuit respectively at Criminal Nos. 2412 and 2413, shows that the 1947 Maui County grand jury was not impaneled in accordance with law. This appears from

the record of the proceedings before Judge Albert M. Cristy, sitting vice Judge Cable A. Wirtz, in the Circuit Court of the Second Circuit, and made part of the record at both our numbers.⁸⁸ The court allowed but a limited review of the methods employed to select the grand jury and of the individual qualifications of the members thereof. Judge Cristy would not permit what he referred to as a "free for all" examination of the members of the panel upon voir dire. He permitted examination of individual grand jurors on voir dire only to the extent of allowing the defendants' counsel to bring out their respective business connections and general position in the community. The court was apparently of the view that a wider scope of examination of the qualifications of individual members of the panel would be irrelevant. Judge Cristy also excluded evidence which, from the nature of the offers made, would have tended to show more clearly that certain important elements of the community were precluded from serving on the grand juries of Maui County. The court, however, permitted enough evidence to come into the record to demonstrate the erroneous method employed in selecting the 1947 Maui County grand jury. [91]

There was evidence which we believe to be credible and from which we find that 84% of the

⁸⁸The challenges are also part of the plaintiffs' bill of particulars which has been made a part of both complaints. See the references to the stipulations in note 87, *supra*.

persons who were selected and listed for grand jury service in 1947 came from the ranks of the employer-entrepreneur group and their salaried (non-labor) employees. The record demonstrates also that all other groups in the community, including labor, had approximately but a 16% representation on the 1947 grand jury list.

The word "haole" has been much employed throughout the testimony and, as we stated at an earlier point in this opinion, a satisfactory definition of it is hard to encompass. A haole was defined by a witness (see note 11, *supra*) as a person of mainland American or of northern European stock, not a person of Portuguese, Spanish or Puerto Rican descent. To this we added the gloss of Adams' definition (see note 13, *supra*) describing the haole as a class of persons of superior economic and social status. As indicated previously we accept this composite definition. The dominant position of the haole in the economic life of the Territory of Hawaii has been testified to repeatedly in the instant case and is also fully borne out by such authorities as Burrows⁸⁹ and Lind.⁹⁰ While we think that the record in the instant cases demon-

⁸⁹See "Hawaiian Americans", by Edwin G. Burrows, Yale University Press, 1947, pp. 1 to 95. See note 14 *supra*.

⁹⁰See "An Island Community, Ecological Succession in Hawaii", by Andrew W. Lind, the University of Chicago Press, 1938 at pp. 112 and 255. This book was introduced in evidence in the proceedings before Judge Cristy. See note 14 *supra*.

strates that the haole group and the employer-entrepreneur group in the Islands should be deemed to be almost co-extensive, we shall not so treat them for the purposes of the question now under discussion and will employ the term "haole" as defined in this paragraph.

Employing that definition we find that though the haole group comprised but about 3.6% of the population of Maui County, the 1947 Maui County grand jury list nonetheless contained the names of twenty-one haoles or 42% of the list. On the other hand there were only six [92] laboring men named on the grand jury list, or a total of 12%. Cf. Movants' Exhibits Nos. 7 and 9. But male laborers in Maui County comprised approximately 79% of the total male population of that County. Again see Movants' Exhibit No. 9. Only laborers are named in the indictment at No. 2365 and in the criminal complaints.

It should be observed that the percentage of Koreans, Hawaiians, Puerto Ricans and Filipinos on the list was zero. There were over 10,000 persons of Filipino descent in Maui County in 1946 and 1947 but the 1947 grand jury list contained no Filipinos. The evidence also shows that Filipinos constitute the second largest national group in the Territory. While Filipinos who had not been engaged in the military service of the United States could not become naturalized citizens until 1946⁹¹

⁹¹See Act of July 2, 1946, 8 U. S. C. A. Sections 703, 724.

nonetheless the registry of voters at the election which was held on November 5, 1946⁹² demonstrates that many, more than one hundred, male Filipinos were entitled to vote at that election. It will be noted that the provisions of Section 9791 of the Revised Laws of Hawaii 1945 do not require that to be eligible for jury service that the individual must be a registered voter but only that he possess the qualifications for registration as a voter. Questionnaires⁹³ were submitted to numerous Filipinos along with other members of the community whom it was contemplated might be called for jury service, and though there were numerous Filipinos who were qualified⁹⁴ none was called to serve. There were a number of Filipinos indicted under the indictment at No. 2365 and named in the criminal complaints hereinbefore referred to. These include at No. 828, Diego Barbosa, Victor Degamo, and Basilo Arruiza; at No. 836, Leocadio Baldovi, Calixtro Cason and Juan Hara.

Statistics are sometimes most misleading when they seem the clearest and we would hesitate to base our decision upon them. Filipinos represent about 35% of the male population of Maui County though comparatively few are citizens, and therefore it

⁹²These lists were filed with the clerk after the termination of the hearings pursuant to permission granted by the court. They are Plaintiffs' Exhibits 22-A and 22-B.

⁹³See Plaintiffs' Exhibits Nos. 23 and 24.

⁹⁴These included Patrick Ortello, Vincente Engoring and Salvadore Seno.

might be argued that it was by pure inadvertence that all of them were excluded from grand jury duty; that the haole group are in fact better educated than the average citizen of Hawaii, and that therefore, since the jury commissioners are required by law to make a "careful investigation in each case",⁹⁵ their selections naturally include more of the better educated members of the community. In this connection we point out again that Section 83 of the Organic Act requires that a juror must be able "understandingly [to] speak, read, and write the English language . . .". The testimony received by Judge Cristy, however, makes it clear, statistics aside, that the exclusion of certain groups of the community was deliberate and intentional.

Pursuant to Section 9799, Revised Laws of Hawaii 1945, the jury lists are made up by three jury commissioners, two of whom are appointed by the judge of the circuit court, the third commissioner being *ex officio* the judge himself. Augustine Pombo, one of the jury commissioners, had served as such for an extended period of time, having had fourteen years of consecutive service with the exception of one year, 1945. The other jury commissioner was Claude E. Chatterton. Judge Wirtz, Mr. Pombo and Mr. Chatterton chose the persons comprising the list of the 1947 Maui County grand jury. When Mr. Pombo was asked why there never had been a

⁹⁵See Section 9800, Revised Laws of Hawaii 1945, and Section 83 of the Organic Act, 48 U. S. C. A. Section 635. See also Sections 9799 and 9803, Revised Laws of Hawaii 1945.

Filipino on the "Grand Jury" he replied candidly, "We just have a lot of other men a lot better."^{96,97} As to the number of haoles on the grand jury list Mr. Pombo's statements were equally pointed and conclusive and admit of no misunderstanding. He testified in effect that he picked haoles because he wanted to give them something to do "... if they want a chance to run the country ...".⁹⁸ The sub-

⁹⁶See p. 312 transcript of proceeding before Judge Albert M. Cristy.

⁹⁷There is a Filipino on the 1948 Maui County grand jury.

⁹⁸See Id. at p. 290. Mr. Pombo testified as follows:

"The Court: Did you pick them because they were haoles?

Witness [Pombo] No, I pick them because I want to give them something to do—if they want a chance to run the country—.

The Court: Did you pick them because of their fairness?

Witness: Because they are fair. They are in court—they have to be fair. There is another jury—in case it don't go right on the Grand Jury, the trial jury is waiting for them.

Mr. Resner [Counsel for the defendants in the proceedings in the Circuit Court of the Second Circuit]: What did you mean a moment ago—you said they wanted a chance to run the country?

A. Well, they do run the country.

Q. How do you mean that?

A. The majority—lots of these—the Baldwins—they own the place.

Q. I see.

A. And if they want to run politics, just as well give them something to do in courts. They can't run it in here because the population getting too independent."

stance of Mr. Pombo's testimony is that haoles were placed on the grand jury so that they might have an opportunity to run the country.

Mr. Pombo's standard of selecting jurymen was also made plain when he stated: "Well, we picked men—majority of them with better education. They are in business in the community." He was then asked, "Was it your feeling that a man in business would be better qualified than a man out of business?" He replied, "He has got a better head on him."⁹⁹

Neither of the other two jury commissioners denied the accuracy of Mr. Pombo's testimony respecting this basis or standard of selection in any particular. What Mr. Pombo said respecting methods of selecting persons to comprise the grand jury list seems to us to be conclusive in proving deliberate exclusion of Filipinos from grand jury service as well as a deliberate weighting of the grand jury list in favor of haoles and against the laboring men of the community. We so find. [95]

Judge Wirtz testified that the selection of jurors was made from persons whom the jury commissioners knew, individuals with whom they had had personal contact on a business or social basis.¹⁰⁰ Judge Wirtz' testimony respecting the personal knowledge of the jury commissioners of the persons selected by them to form the list was corroborated

⁹⁹See *Id.* at p. 318.

¹⁰⁰See *Id.* at pp. 161-162.

by Mr. Pombo and to some extent also by Mr. Chatterton.¹⁰¹ See *Smith v. Texas*, 311 U. S. 128, 132.

Section 9800, Revised Laws of Hawaii 1945, provided in respect to the selection of jurors, both grand and petit, that, "If practicable, no person shall be selected who has served as a juror or grand juror within one year." Movants' Exhibit No. 15 in the proceedings before Judge Cristy on the challenges to the jury commissioners and to the 1947 grand jury of Maui County by Makekau, et al., and Barbosa, et al., Criminal Nos. 2412 and 2413, Circuit Court, Second Circuit, Territory of Hawaii, covers the service of members of the Maui County grand jury panels from 1942 to 1947, inclusive. The exhibit, however, was so qualified by the testimony of Judge Wirtz¹⁰² that it appears that the term "service" as employed in the exhibit meant listing on the grand jury lists rather than actual service on a grand jury. Assuming, as we think we must, that the terms "service" and "served" as employed in the exhibit mean being named on a grand jury list, rather than actual service on a grand jury, i. e., being called and sworn to serve thereon, the exhibit is enlightening nonetheless as to the methods employed in constituting grand jury lists in Maui County for it demonstrates that 54 individuals were listed to serve for 141 years of a total of 300 man-years (50 men on each jury list for 6 years) during the period indicated. It does appear, however, from

¹⁰¹See *Id.* at pp. 354 et seq.

¹⁰²*Id.* at p. 242-245.

the testimony taken before Judge Cristy that there was no person on the 1947 grand jury list who had been listed as a grand juror in Maui County in 1946.

Section 9800 stated, prior to amendment, that if practicable no person should be selected who had served as a juror within a year. Section 9800, as we have said, was amended by L. 1945, c. 163, s. 1, (Section 9800.01) to provide that no person should be selected and listed as a grand juror who had been so selected and listed within one year and that no person should be selected and listed as a trial juror who had been so selected and listed within one year. The law as amended became effective on May 14, 1945, subject to a qualification not here pertinent. Despite these provisions, however, it will be observed from Plaintiffs' Exhibit No. 26 that at least seven persons (at least six of whom were haoles) who were listed on the 1945 Maui County grand jury list were listed again on the 1946 list. It will be remembered that the 1946 grand jury returned the first indictment, Plaintiffs' Exhibit No. 9, against Kaholokula and others based on the unlawful assembly and riot act of the Territory of Hawaii. The names of the seven men to whom we have referred are H. B. Benner, F. G. Bush, A. J. Collins, Wm. Dickson, F. J. S. Gay, J. W. Hoxie, and E. F. Sabin. The 1946 indictment of Kaholokula, et al., was quashed by order of the Supreme Court of Hawaii following its opinion in *Territory of Hawaii v. Kaholokula, et al.*, 37 Haw. 625, and the facts stated have no specific bearing on the 1947 grand jury list. They are illuminating, however, in view of what we have previously

stated in respect to the handling of grand jury lists in the Circuit Court, Second Circuit, and they are pertinent insofar as they serve to corroborate Pombo's testimony set out in note 98, *supra*.

Section 83 of the Organic Act provides *inter alia* that ". . . all juries shall be constituted without reference to the race or place of nativity of the jurors." Yet the questionnaires in evidence¹⁰³ submitted to each prospective juror in every instance require a statement as to where the individual was born and the nationality of both his father and mother. True, "race" is not "nationality" if the two words be employed in a strict ethnological sense but commonly the word "race" is used to denote "The descendants of a common ancestor; a family, tribe, people, or nation . . ."¹⁰⁴ We are of the opinion that the questions to which we have referred were in fact directed to "race" as that word is used in the ordinary or common sense and, therefore, indirectly at least, referred to "place of nativity" in derogation of Section 83 of the Organic Act. The questionnaires seem to have been employed for no purpose within the law insofar as the 1947 grand jury was concerned. See Section 9791, Revised Laws of Hawaii 1945.

In view of the foregoing we conclude that the 1947 Maui County grand jury was constituted illegally. The provisions of the Fifth Amendment

¹⁰³Plaintiffs' Exhibits 23 and 24.

¹⁰⁴See Webster's New International Dictionary, 2nd Edition.

to the Constitution of the United States apply to the Territory of Hawaii. See *Hawaii v. Mankichi*, 190 U. S. 197, 211. Cf. *Andres v. United States*, *supra*, 333 U. S. at p. 748. The exclusion of Filipinos from grand jury service for the reason given by Pombo falls clearly within the prohibition of that line of cases beginning with *Strauder v. West Virginia*, 100 U. S. 303, and running through *Smith v. Texas*, *supra*, to *Patton v. Mississippi*, 332 U. S. 463. There was also, as we have indicated, a deliberate substantial exclusion of wage earners and a deliberate substantial weighting of the grand jury list in favor of "businessmen", in the instant cases, really the employer-entrepreneur which includes the haole group of Maui County. This also is prohibited. In *Thiel v. Southern Pacific Co.*, 328 U. S. 217, 220-4, the Supreme Court by Mr. Justice Murphy stated: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors [98] shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society.

Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. . . . Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, . . . a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

Compare *Fay v. New York*, 332 U. S. 261. In the cited case the Supreme Court held that consistent with due process of law required by the Fourteenth Amendment a State could try a defendant charged with a crime by a special or "blue ribbon" jury. Mr. Justice Jackson distinguished carefully, however, between State and federal juries and the decisions respecting each. See 332 U. S. at pp. 284 et seq., and compare *Moore v. New York*, 333 U. S. 565.

It is clear that the Territory of Hawaii and its Legislature, Executive Officers and Judiciary, can exercise only the powers delegated to them by Con-

gress, and that Congress cannot deny the right of trial by jury as guaranteed by the Sixth Amendment or indictment by a grand jury under the Fifth Amendment. The constitutional guarantee requires that no group in the community shall be excluded deliberately from jury service and that a grand jury panel shall constitute a fair cross-section of the country or locality from which it is drawn. The 1947 Maui County grand jury was constituted in disregard of these fundamental principles, as well as of others of importance embraced in the local law as we have indicated.¹⁰⁵ We, therefore, have no

¹⁰⁵The plaintiffs assert as another ground of challenge to the 1947 Maui County grand jury that no women were included. Put briefly, the argument made by the plaintiffs runs as follows: Section 83 of the Organic Act, 48 U. S. C. A. Section 635 provides that "... no person who is not a male citizen of the United States . . . shall be a qualified juror or grand juror in the Territory of Hawaii." See also the similar provision of Section 9791, Revised Laws of Hawaii 1945. By the Act of June 26, 1930, 46 Stat. 818, the qualifications of electors of the Territory was amended by striking from Section 60 of the Organic Act, 48 U. S. C. A. Section 617, the word "male" so that women are now qualified electors in the Territory. The Nineteenth Amendment to the Constitution of the United States, effective August 26, 1920, provides that "The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of sex." The plaintiffs contend that with the adoption of the Amendment "... women became qualified jurors since the qualifications for jury service existing as of that time were the same as for electors." Cf. *Ballard v. United States*, 329 U. S. 187, and see *State v. Walker*, 192

hesitancy in enjoining the prosecution of the individual plaintiffs under indictment No. 2365, even if that prosecution was not to be restrained for the reasons stated under the earlier heading of our opinion.

The plaintiffs also charge the jury commissioners with bias and prejudice and point out that Mr. Pombo, Mr. Chatterton and Judge Wirtz are still in office. This court would be without power to remove them from office, even if we were of the opinion that the facts warranted such action. The challenges to individual members of the grand jury were not sufficiently developed in the evidence possibly because of the exclusion of evidence by the Circuit Court of the Second Circuit which tried the proceeding. Under these circumstances there can be no point in further discussion. [100]

Iowa 823, 185 N. W. 619 and *State v. Hickman*, 195 Iowa 765, 791, 193 N. W. 21.

But the provisions of the Nineteenth Amendment guarantee to women who are citizens of the United States only the right to vote. Section 83 of the Organic Act, 48 U. S. C. A. Section 635, has not been amended, that statute still providing that jurors shall be male citizens. Section 9791, Revised Laws of Hawaii 1945, as amended, follows in respects here pertinent, the language of Section 83 of the Organic Act. The enlargement of the group of electors of the Territory by adding women thereto by statutory enactment pursuant to the mandate of the Nineteenth Amendment cannot automatically qualify women as jurors in the territorial courts of Hawaii. The point asserted by the plaintiffs is lacking in merit.

RESPECTING THE QUALIFICATIONS OF
CERTAIN PLAINTIFFS TO MAINTAIN
SUIT AND QUESTIONS OF MISJOINDER,
OR LACK OF CAPACITY OF CERTAIN
DEFENDANTS TO BE SUED.

As we have indicated we entertain no doubt of the right of the individual plaintiffs, who are defendants in the various criminal proceedings which we have referred to, to maintain the suits at bar under the Civil Rights Acts. So much we think is clear, but do the ILWU, Kawano at No. 828 and Rania at No. 836, possess the right to maintain suits?

The Court of Appeals for the Third Circuit in the Hague case, *supra*, 101 F. 2d at p. 790, for the reasons therein stated, held that unincorporated associations, labor unions, were proper parties and possessed the capacity to conduct in the interests of their respective members a suit based on the Civil Rights Acts. Mr. Justice Roberts in his opinion in *Hague v. C. I. O.*, *supra*, 307 U. S. at p. 514, disagreed. Basing his opinion on the privileges and immunities clause of the Fourteenth Amendment, he pointed out that "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit." While this opinion is entitled to great weight we think that the rights guaranteed by the First Amendment are protected from abridgment by a

State by virtue of the due process clause of the Fourteenth Amendment. See the opinion of Mr. Justice Stone in the *Hague* case, and *Saia v. New York*, 334 U. S. 558. The privileges and immunities secured to citizens against encroachment by the States under the Fourteenth Amendment are substantially identical, insofar as the instant cases are concerned, with those guaranteed to any individual against impairment by the federal government under the First Amendment. We can perceive no reason, in the light of history, why an unincorporated association should not be held to be "a person" within the meaning of the Fifth or Fourteenth Amendment. Moreover, in *A. F. of L. v. Watson*, *supra*, the Supreme Court seemed to entertain no doubt of the capacity of the union to maintain a suit to test the constitutionality under the Federal Constitution of an amendment to the Constitution of Florida. It may have been argued in the cited case, as in effect it was argued in the instant cases, that the interest of the Union was too remote to give it *locus standi*. See 327 U. S. at pp. 582, 587. Cf. *Grosjean v. American Press Co.*, *supra*, 297 U. S. at p. 244. But in any event the decision in *A. F. of L. v. Watson* is governing here and we hold that the ILWU is entitled to maintain the instant suits as a party plaintiff. This is so whether the suit be maintained as a true class action under Rule 23 (a) (1) of the Federal Rules of Civil Procedure, made applicable in the District Court of the United States for the District of Hawaii by Section 86a of

the Organic Act, 48 U. S. C. A. Section 646, pursuant to Section 1337 of revised Title 28, United States Code, or under Rule 23 (a) (3), as a spurious class suit to redress the deprivation of civil rights under Section 1343 of revised Title 28, United States Code. See *Deckert v. Independence Corp.*, 311 U. S. 282. Accordingly the motions to dismiss it as a party will be denied.

The defendants have made like motions to dismiss as to Kawano and Rania who, as has been stated, have sued as members and officials of the ILWU as well as individually. Their representative statuses are clear and it is unnecessary for Kawano at No. 828 to rely for a representative capacity on his presidency of the now defunct Territorial Council of the ILWU. We think that both of these individuals are entitled to maintain the representative actions in which they appear as plaintiffs. See Rule 23 (a) (3) of the Federal Rules of Civil Procedure. See *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 385; *United States v. White*, 322 U. S. 694. Cf. *Montgomery Ward & Co. v. Langer*, 168 F. 2d 182, 187. The motions to dismiss as to Kawano and Rania will be denied.

As to the Territorial Council of the ILWU, a plaintiff at No. 828, since it was no longer in existence at the time the cases were tried, it will be dismissed as a plaintiff.

A number of the defendants have moved to dismiss on the ground that no cause of action has been stated as to them or on the ground of misjoinder or

for other reasons. Judge Cable A. Wirtz has been sued individually as a Circuit Court Judge and as Jury Commissioner of the County of Maui, and Messrs. Pombo and Chatterton have been sued both individually and as Jury Commissioners of Maui County. The 1947 Maui County grand jury like that of 1946 is now *functus officio*. This court has no power over Judge Wirtz or over Mr. Pombo or Mr. Chatterton as jury commissioners as we have already indicated. We cannot undertake to govern their future actions by prescient decrees. The relief sought against Judge Wirtz seems to be sought solely against him as a jury commissioner.¹⁰⁶ The prayers of the respective complaints do not seek to restrain him in any other way. It follows that no relief has been sought against these defendants either individually or otherwise which can be granted by this court. Accordingly they will be dismissed as defendants.

What has been said respecting Judge Wirtz and the two other jury commissioners is true in substance as to the twenty-one grand jurors who comprised the 1947 Maui County grand jury and who are named as defendants both individually and as grand jurors. The work of that grand jury is over and done and its members have been discharged. There is no basis for present injunctive relief against them or any of them. Accordingly they will be dismissed as defendants. We note parenthetically

¹⁰⁶See paragraph XI of the Complaint at No. 828 and paragraph X of the complaint at No. 836.

that none of the individual grand jurors at No. 836 was served with process. This constitutes an additional ground for the dismissal of the suit at No. 836 as to them.

The Honorable Ingram M. Stainback has been named as a defendant both individually and as Governor of the [103] Territory of Hawaii. Section 67 of the Organic Act, 48 U.S.C.A. Section 532, states that "The governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory . . .". Section 9572, Revised Laws of Hawaii 1945, provides, ". . . the [Judiciary] department and the several judges and other judicial officers thereof shall in all respects be independent of both the executive and legislative departments. The governor shall have no power to interfere with, alter or overrule any order, writ, judgment or decision of any court, judge, or other judicial officer, except in the exercise of the power to grant reprieves and pardons in pursuance of law." If there be a conflict between the provisions of Section 67 of the Organic Act and Section 9572 of the Revised Laws of Hawaii 1945, it is unnecessary to resolve it for there is not an iota of evidence to prove that Governor Stainback had any connection with any of the prosecutions complained of. Accordingly the complaints will be dismissed as to him for want of equity.

Walter D. Ackerman, Jr., has been sued individually and as Attorney General of the Territory of

Hawaii. It is contended that he was appointed to office after the happening of the events complained of and therefore should not be held as a party defendant. It should be noted, however, that Mr. Ackerman took office on October 14, 1947, and Joseph Kaholokula, et al., were indicted (second indictment) December 2, 1947. The relief which we shall grant, however, will be injunctive in its nature and the laws of the Territory of Hawaii require that the Attorney General "... shall appear for the Territory personally or by deputy, in all courts of record, in all cases criminal or civil, in which the Territory may be a party, or be interested, and may in like manner appear in the district courts in such cases." Section 1501, Revised Laws of Hawaii 1945. Section 1502, Revised Laws of Hawaii 1945, provides inter alia, that the Attorney General "... shall be vigilant and active in detecting offenders against the laws of the Territory [104] and shall prosecute the same with diligence . . .". In view of all the circumstances it would be improper to dismiss Mr. Ackerman as a party defendant. Accordingly the motions to dismiss as to him will be denied.

E. R. Bevins has been sued individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Deputy County Attorney of Maui County, has also been sued individually and as Deputy County Attorney. By Section 6271, Revised Laws of Hawaii 1945, Mr. Bevins is made a deputy to the Attorney General for the purposes of law enforcement, and Mr. Crockett is Mr. Bevins'

deputy. They are properly in the cases as defendants and must remain. They have moved to dismiss the complaints on the ground of lack of equity. The motions will be denied.

Jean Lane has been sued at No. 828 individually and as Chief of Police of Maui County. As the chief law enforcement officer of that County he is properly a party to the proceedings. See Sections 6472-4, Revised Laws of Hawaii 1945. Accordingly the motion to dismiss as to him will be denied.

The motions heretofore made in the cases for more definite statements, to strike the complaints, to dismiss the actions and for summary judgments, were denied at preliminary stages for what the court deemed to be sufficient reasons and in order that these long pending litigations might be proceeded with promptly. Thereafter, these motions were renewed at the suggestion of the court and were taken under advisement. They will now be denied.

All motions made by the parties to strike testimony or documentary evidence will be denied.

All other points raised by the respective parties have been considered by the court but require no discussion. [105]

CONCLUSION

Decrees will be entered at Nos. 828 and 836, *mutatis mutandis*, in accordance with the relief to be granted under this opinion to the respective parties and movants, and, in particular adjudging the

unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii to be void as unconstitutional and restraining the defendants Ackerman, Bevins, Crockett, and Lane and their respective agents and deputies and their successors in office from proceeding with the prosecution of the individual plaintiffs as designated herein under any complaint or indictment based on the unlawful assembly and riot act or the conspiracy statute of the Territory of Hawaii. The decrees will be so framed that the benefits thereof shall inure to the ILWU, and to Kawano and Rania in their respective representative capacities.

We believe that all necessary findings of fact and conclusions of law are contained in this opinion as contemplated by Rule 52 (a) of the Federal Rules of Civil Procedure.

Decrees may be submitted.

/s/ JOHN BIGGS, JR.,

Circuit Judge,

/s/ DELBERT E. METZGER,

Chief Judge,

/s/ GEORGE B. HARRIS,

District Judge.

[Endorsed]: Filed Dec. 27, 1948.

[Title of District Court and Causes.]

Before: Biggs, Circuit Judge, Metzger, Chief Judge, and Harris, District Judge.

ORDER

And Now, to Wit, this 18th day of January, 1949,

It Is Ordered that the opinion filed in the above entitled cases on December 27, 1948, be and the same hereby is amended by striking therefrom note 59 in toto and substituting in lieu thereof the following:

“59. It may be asserted that the District Court for Hawaii when it sits en banc may not be comprised of more than two judges since Section 133 of revised Title 28 provides, as did Section 86 of the Organic Act, for only two district judges in Hawaii. Such a limitation in our opinion does not exist. Section 132(b) of revised Title 28 provides, it is true, that each district could shall consist of the district judges for the district in active service. But that subsection also provides that, “* * * judges designated or assigned shall be competent to sit as judges of the court.’ The two judges sitting in this case with the Chief Judge of the District Court were thus designated or assigned and comprise a court of three judges sitting en banc.

“The other District Judge for Hawaii did not sit. This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the

number of the court is not reduced below that legally required for the transaction of business. See 14 Am. Jur., Courts, Section 58, p. 282; 21 C.J.S., Courts, Section 183(b), p. 294, and the authorities cited therein. See also the opinion of Mr. Chief Justice Marshall in *Pollard v. Dwight*, 8 U.S. 251, 255-6; *Frank v. Bayuk*, 322 Pa. 282, 284, 185 A. 705, 706; *Zimmerman v. Pennsylvania R. Co.*, 293 Pa. 264, 266, 142 A. 220; *In re McCormick's Contested Election*, 281 Pa. 281, 285, 126 A. 568, 570; *Cowan v. Murch*, 97 Tenn. 590, 601, 37 S.W. 393, 396; and *Long v. State*, 59 Tex. Crim. Rep. 103, 116, 127 S.W. 551, 558. By Section 132(c) of revised Title 28, a quorum of the United States District Court for the District of Hawaii consists of but one judge. Section 132(b) seems to dispose of any possible doubt respecting the authority of the three judges shown on this opinion to sit en banc in the instant cases and to adjudicate the issues presented.”;

By striking the name “Zachariah” from note 68 on page 64 and substituting in lieu thereof the name “Zechariah”;

By striking out the word “vehicles” in the third line on page 79 and inserting in lieu thereof the words “the vehicle.”

/s/ JOHN BIGGS, JR.,
Circuit Judge.

/s/ DELBERT E. METZGER,
Chief Judge.

/s/ GEORGE B. HARRIS,
District Judge.

[Endorsed]: Filed Jan. 18, 1949.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a Voluntary,
Unincorporated Association and Labor Union,
et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, Jr., Individually and
as Attorney General of the Territory of Ha-
waii, et al,

Defendants.

MOTION SUGGESTING THE ABATEMENT
OF THE ACTION AS TO THE DEFEND-
ANTS E. R. BEVINS, INDIVIDUALLY
AND AS COUNTY ATTORNEY FOR THE
COUNTY OF MAUI, AND WENDELL F.
CROCKETT, INDIVIDUALLY AND AS
DEPUTY TO THE COUNTY ATTORNEY
FOR THE COUNTY OF MAUI, AND FOR
THE DISMISSAL OF THE ACTION AS TO
THEM

Comes now Walter D. Ackerman, Jr., Attorney
General of Hawaii, and hereby respectfully sug-
gests to the Court that this action has abated as to
the defendants E. R. Bevins, individually and as
County Attorney for the County of Maui, and Wen-
dell F. Crockett, individually and as deputy to the

County Attorney for the County of Maui, for the reason that said defendants ceased to hold office as of January 3, 1949, and the action has become moot as to them.

Wherefore, this defendant moves the Court that in its decree herein the action be dismissed as to said defendants Bevins and Crockett, on the ground that it has become moot as to them.

This motion is based on the affidavit hereto attached and on all of the proceedings herein.

Dated at Honolulu, T. H., this 18th day of January, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.

To Bouslog and Symonds, Attorneys for Plaintiffs, 209 Terminal Building, Honolulu, T. H.

Please take notice that the above motion will be presented to the Court for disposition upon the settlement of the decree herein.

Dated at Honolulu, T. H., this 18th day of January, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

Walter D. Ackerman, Jr., being first duly sworn, deposes and says:

That he is now and has been since October 14, 1947, the duly appointed, qualified and acting Attorney General of Hawaii.

That in the County of Maui a new term of office for county officers commenced on January 3, 1949, in accordance with the laws of the Territory of Hawaii.

That in the 1948 elections the then incumbent County Attorney, E. R. Bevins, did not run for reelection to the office of County Attorney. That Harold L. Duponte was duly elected as County Attorney for the County of Maui and took office on January 3, 1949. That Thomas Ogata is the only deputy of said Harold L. Duponte, County Attorney for the County of Maui, and that as of January 3, 1949, Wendell F. Crockett ceased to hold the office of deputy county attorney for the County of Maui.

/s/ WALTER D. ACKERMAN, JR.

Subscribed and sworn to before me this 18th day of January, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: June 30, 1949.

[Endorsed]: Filed Jan. 20, 1949.

[Title of District Court and Cause.]

ORDER

And Now, to wit, this 23rd day of February, 1949, it appearing from the motion and affidavit of the Honorable Walter D. Ackerman, Jr., Attorney Gen-

eral of the Territory of Hawaii, filed herein on January 20, 1949, that the Honorable E. R. Bevins, sued herein as County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, sued herein as Deputy County Attorney of the County of Maui, Territory of Hawaii, ceased to hold office on or about January 3, 1949, and that the Honorable Harold L. Duponte was elected as County Attorney of the County of Maui and took office as such on or about January 3, 1949, and that the Honorable Thomas Ogata took office as Deputy County Attorney of Maui County on or about the same day, it is

Ordered that the Honorable Harold L. Duponte, County Attorney of the County of Maui and the Honorable Thomas Ogata, Deputy County Attorney of the County of Maui, Territory of Hawaii, shall show cause, if any there be, why they should not be substituted respectively vice the Honorable E. R. Bevins, formerly County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, as parties defendant, either individually or in their respective capacities as County Attorney of the County of Maui and Deputy County Attorney of the County of Maui, or as parties defendant both individually and as County Attorney of the County of Maui and Deputy County Attorney of the County of Maui, respectively, or added as parties defendant, as indicated, in the above-entitled cause, to the end that they or either of them may

not be made subject to the decree to be issued by this court pursuant to its opinion filed herein on December 27, 1948, upon such terms and conditions as this court may deem just and proper, and it is

Further Ordered that the parties to this proceeding as named in the title of this case shall also show cause, if any there be, why the substitutions or additions of parties defendant referred to in the last foregoing paragraph of this order should not be made as indicated, and it is

Further Ordered that the Honorable Harold L. Duponte and the Honorable Thomas Ogata and the parties to this proceeding as named in the title of this case shall make answer to this rule on or before March 10th, 1949, and it is

Further Ordered that service of this rule to show cause shall be made upon the Honorable Harold L. Duponte, County Attorney of the County of Maui, the Honorable Thomas Ogata, Deputy County Attorney of the County of Maui, and the Honorable Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, upon Jean Lane, Chief of Police of the County of Maui, upon the Honorable E. R. Bevins, formerly County Attorney of the County of Maui, and upon the Honorable Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, by serving a certified copy of this rule to show cause upon each of them in the manner prescribed by Rule 4(c) of the Federal Rules of Civil Procedure, and it is

Further Ordered that service of this rule to show cause shall be made upon all the parties to this proceeding as named in the title of this case (including the Honorable Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, upon Jean Lane, Chief of Police of the County of Maui, the Honorable E. R. Bevins, County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, Deputy County Attorney of the County of Maui, service as prescribed in this paragraph upon the defendants Ackerman, Lane, Bevins and Crockett, being in addition to that prescribed as to them by the last foregoing paragraph of this order) by serving the same upon their respective counsel of record in this cause in the manner prescribed by Rule 5(b) of the Federal Rules of Civil Procedure, and it is

Further Ordered that upon answers being made as directed that this cause shall be set down for hearing as, when and if, the court shall direct.

/s/ JOHN BIGGS, JR.,

Circuit Judge.

/s/ DELBERT E. METZGER,

Chief Judge.

/s/ GEORGE B. HARRIS,

District Judge.

RETURN ON SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Order on the therein-named Walter D.

Ackerman, Jr., by handing to and leaving a true and correct copy thereof with the said Walter D. Ackerman, Jr., personally at the Executive Bldg., Honolulu, T. H., in said District on the 24th day of February, A. D. 1949.

OTTO F. HEINE,

U. S. Marshal.

By /s/ GEORGE E. BRUNS,
Deputy.

RETURN OF SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Order on the therein-named H. L. Duponte, W. F. Crockett, Jean R. Lane, E. R. Bevins and Thomas Ogata by handing to and leaving a true and correct copy thereof with them personally at Wailuku, Maui, in said District on the 26th day of February, A.D. 1949.

OTTO F. HEINE,

U. S. Marshal.

By /s/ R. A. NEWTON, JR.,
Deputy.

[Endorsed : Filed Feb. 23, 1949.]

[Title of District Court and Cause.]

RETURN TO RULE TO SHOW CAUSE
ISSUED FEBRUARY 23, 1949

Come now Walter D. Ackerman, Jr., named in this cause individually and as Attorney General of the Territory of Hawaii, Jean Lane, named in this cause individually and as Chief of Police of the County of Maui, defendants herein, and Harold L. Duponte, County Attorney of the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, pursuant to the Court's rule to show cause issued February 23, 1949, and for their return to said rule to show cause show:

I.

This return is made by the Attorney General of Hawaii on his own behalf and on behalf of Jean Lane, Chief of Police of the County of Maui, and is made by Harold L. Duponte, County Attorney of the County of Maui, on his own behalf and on behalf of his deputy, Thomas Ogata. The Attorney General hereby informs the Court that for the reasons stated in his motion and affidavit filed January 20, 1949, he no longer represents E. R. Bevins, formerly County Attorney of the County of Maui, or Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, they no longer being public officers.

II.

This cause is moot as to said E. R. Bevins, formerly County Attorney of the County of Maui,

and said Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, for the reasons stated in the Attorney General's motion and affidavit filed January 20, 1949, and should be dismissed as to them irrespective of the joinder as defendants of their successors in office, by way of substitution or as additional defendants.

III.

Harold L Duponte, County Attorney of the County of Maui, hereby informs the Court that he took office as such County Attorney on January 3, 1949, and that Thomas Ogata is his duly appointed and qualified deputy and his only deputy; that prior to assuming office as such County Attorney said Harold L. Duponte was of counsel for some of the plaintiffs involved in the prosecution commenced in October, 1946, concerning the Paia incident (to which Civil No. 836 relates), and was of counsel for some of the plaintiffs involved in the prosecutions commenced July 16, 1947, and August 1, 1947, concerning the Kaumalapau Wharf incident (to which this cause relates in part); that on February 16, 1949, he informed the Attorney General that he deemed himself disqualified, together with his deputy, as to such prosecutions and the Attorney General concurred that the County Attorney and his deputy are so disqualified; that the Attorney General thereupon informed said Harold L. Duponte that by reason of such disqualification, the Attorney General was assuming direct charge of such prosecutions; that subsequently the

Attorney General informed said Harold L. Duponte, County Attorney of the County of Maui, that for reasons more fully stated in the next paragraph of this return he, the attorney General, unless the County Attorney objected thereto, was assuming direct charge of all of the criminal cases involved in Civil No. 836 and this cause, that is to say, in addition to those cases concerning the Paia incident and the Kaumalapau Wharf incident as to which the County Attorney and his deputy are disqualified, the remaining prosecution commenced July 15, 1947, concerning the Kalua incident; that said County Attorney made no objection to said decision of the Attorney General and has forwarded to the Attorney General all the papers and files of his office concerning said prosecutions; that said County Attorney has no intention of acting further in said criminal matters, or any of them, whether or not restrained by this Court, nor has his deputy.

IV.

Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, hereby informs the Court that on February 16, 1949, he was informed by Harold L. Duponte, who since January 3, 1949, has been and now is the County Attorney of the County of Maui, that prior to assuming office he had been of counsel for some of the plaintiffs in this cause and Civil No. 836 as more fully stated in the preceding paragraph of this return, and that he deemed himself disqualified, together with his deputy, as to the criminal prosecutions concerning the Paia in-

cident (to which Civil No. 836 relates) and the Kaumalapau Wharf incident (to which this cause relates in part); that the Attorney General concurred that the County Attorney and his deputy are so disqualified; that the Attorney General thereupon informed said Harold L. Duponte that by reason of such disqualification, the Attorney General was assuming direct charge of such prosecutions; that subsequently the Attorney General informed said Harold L. Duponte, County Attorney of the County of Maui, that since the County Attorney and his deputy are qualified only as to the one matter of the prosecution commenced July 15, 1947, concerning the Kalua incident (the remaining prosecution to which this cause relates), retention by the County Attorney's office of this one matter, while the Attorney General's office assumed direct charge of the other matters, as to which said County Attorney and his deputy are disqualified, would entail duplication of work by the two offices, both in this Court and, should the restraining order or injunction of this Court be dissolved, in the territorial courts and on subsequent appeals; that to avoid such duplication of work by the two offices he, the Attorney General, unless the County Attorney objected thereto, was assuming direct charge of all of the criminal cases involved in Civil No. 836 and this cause, that is to say, in addition to the cases in which the County Attorney and his deputy are disqualified, the remaining prosecution commenced July 15, 1947, concerning the Kalua incident; that said County Attorney made no objection to said

decision of the Attorney General and the Attorney General has assumed direct charge of said criminal cases.

V.

Harold L. Duponte and Thomas Ogata, County Attorney and Deputy County Attorney, respectively, of the County of Maui, call to the attention of the Court that there is no pleading stating any cause of action against them, there is no subject matter over which this Court has acquired jurisdiction so far as they are concerned, and there is no showing of any need, substantial or otherwise, for continuing or maintaining this action against them as successors in office as contemplated by Rule 25 of the Federal Rules of Civil Procedure. None of the proceedings or evidence herein is binding upon said Harold L. Duponte or Thomas Ogata, County Attorney and Deputy County Attorney, respectively, of the County of Maui. Should this Court order said persons joined as parties defendant, then they pray that they may be informed of the cause of action alleged against them, and may be given an opportunity to move, answer or otherwise plead thereto, and to be heard in their own defense.

VI.

Said Harold L. Duponte and Thomas Ogaha object to being made parties herein individually for the reasons stated in paragraph V. So far as their official capacity is concerned they present the objections stated in paragraph V, and in addition thereto: (1) they assert the immunity of the Ter-

ritory of Hawaii from suit; (2) they call to the attention of the Court that by reason of the matters and things averred in paragraphs III and IV of this return, there is no need for continuing or maintaining this suit against them; and (3) they hereby inform the Court on their oaths of office that notwithstanding they are not parties defendant, they deem themselves bound by such decree as may be entered herein against the Attorney General, so long as and to the extent that said decree is binding upon the Attorney General, for the reason that as law officers of the Territory of Hawaii they could not take any action in the name of the Territory which its chief law officer, the Attorney General, was restrained from taking in its name.

Wherefore, the persons above named who make this return to the rule to show cause issued February 23, 1949, pray that said rule be dismissed.

Dated March 4, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of the Territory of Hawaii, Attorney for the Defendants Named in this Cause as Walter D. Ackerman, Jr., Individually and as Attorney General of the Territory of Hawaii, and Jean Lane, Individually and as Chief of Police of the County of Maui.

/s/ HAROLD L. DUPONTE,
County Attorney of the County of Maui, Attorney for Harold L. Duponte, County Attorney of the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui.

Territory of Hawaii,
City and County of Honolulu—ss.

Walter D. Ackerman, Jr., being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii, that he has read the foregoing return and knows the contents thereof and particularly paragraph IV thereof, and that the matters and things stated in said paragraph IV are true.

/s/ WALTER D. ACKERMAN, JR.

Subscribed and sworn to before me this 4th day of March, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: June 30, 1949.

Territory of Hawaii,
County of Maui—ss.

Harold L. Duponte, being first duly sworn, deposes and says: That he is the duly elected, qualified and acting County Attorney of the County of Maui, that he has read the foregoing return and knows the contents thereof, and particularly paragraph III thereof, and that the matters and things stated in said paragraph III are true.

/s/ HAROLD L. DUPONTE.

Subscribed and sworn to before me this 7th day of March, 1949.

[Seal] /s/ EDWARD K. TAM,
Notary Public, Second Judicial Circuit, Territory
of Hawaii.

My commission expires: March 10, 1952.

[Endorsed]: Filed Mar. 10, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE OF RETURN TO
RULE TO SHOW CAUSE ISSUED FEB-
RUARY 23, 1949

Territory of Hawaii,
City and County of Honolulu—ss.

Samuel Kiilehua, being first duly sworn deposes and says: That he is a citizen of the United States, a resident of the Territory of Hawaii, City and County of Honolulu, and is employed as a clerk in the Office of the Attorney General of the Territory; that on the 10th day of March, 1949, affiant mailed a full, true and correct copy of the "Return to Rule to Show Cause Issued February 23, 1949," filed on said date by the Attorney General of Hawaii and the County Attorney for the County of Maui, to each person hereinafter named, enclosed in a sealed envelope with the postage thereon fully prepaid, addressed to each such person at the respective addresses hereinafter given; and that such copies

were so mailed by depositing same in the United States Post Office in Honolulu, Territory of Hawaii.

Harriet Bouslog, 209 Terminal Building, Honolulu, T. H.

Myer C. Symonds, 209 Terminal Building, Honolulu, T. H.

E. R. Bevins, Wailuku, Maui, T. H.

Wendell F. Crockett, Wailuku, Maui, T. H.

/s/ SAMUEL KIILEHUA.

Subscribed and sworn to before me this 11th day of March, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Mar. 11, 1949.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now E. R. Bevins, one of the defendants in the above entitled proceedings named therein as such individually and as County Attorney for the County of Maui and making return to the order made in the above entitled proceedings respectfully represents;

That his term of office as County Attorney of the County of Maui expired at 12 o'clock noon on January 3rd, 1949, and that he, the answering de-

fendant, has no longer any power or authority to act either individually or as such County Attorney of the County of Maui; that any further action taken or attempted to be taken by him in the above entitled matter would be without legal authority or effect, and that as to him, the said E. R. Bevins, both individually and as County Attorney of the County of Maui the said action should be dismissed.

Dated this 8th day of March 1949.

/s/ E. R. BEVINS.

[Endorsed]: Filed Mar. 11, 1949.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Wendell F. Crockett, one of the Defendants in the above entitled proceedings named therein as such individually and as Deputy County Attorney for the County of Maui and making return to the order to show cause made in the above entitled proceedings dated on the 23rd day of February, 1949, respectfully represents:

That his term of office as Deputy County Attorney of the County of Maui expired at 12 o'clock noon on January 3rd, 1949, and that he, the answering defendant, has no longer any power or authority to act as a prosecuting officer of the County of Maui, or Territory of Hawaii, either individually or as such Deputy County Attorney of the County of Maui, or as Deputy of the Attorney General of the

Territory of Hawaii; that any further action taken or attempted to be taken by him individually in the above entitled matter would be without legal authority or effect, and that as to him, the said Wendell F. Crockett, both individually and as former Deputy County Attorney of the County of Maui the said action should be dismissed.

Dated this 11th day of March, 1949.

/s/ WENDELL F. CROCKETT.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE OF RETURN
TO ORDER TO SHOW CAUSE

Territory of Hawaii,
City and County of Honolulu—ss.

Samuel Kiilehua, being first duly sworn deposes and says: That he is a citizen of the United States, a resident of the Territory of Hawaii, City and County of Honolulu, and is employed as a clerk in the Office of the Attorney General of the Territory; that at the request of Wendell F. Crockett, he did on March 12, 1949 serve the return of said Wendell F. Crockett to the order to show cause issued February 23, 1949, being the return filed March 12, 1949, on Bouslog and Symonds, attorneys for the plaintiffs, by leaving a full, true and correct copy of the same at their office, 209 Terminal Building, Honolulu, with the person in charge of said office.

/s/ SAMUEL KIILEHUA.

Subscribed and sworn to before me this 14th day of March 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

[Endorsed]: Filed Mar. 12, 1949.

[Title of District Court and Cause.]

ORDER DISCHARGING RULE TO
SHOW CAUSE

And Now, to wit, this 24th day of March, 1949, upon consideration of the return or answer of Harold L. Duponte, County Attorney of the County of Maui, made on his own behalf and on behalf of Thomas Ogata, Deputy County Attorney of the County of Maui, filed herein on March 10, 1949, in response to the rule to show cause filed herein on February 23, 1949, requiring the said Duponte and the said Ogata and the parties to this case to show cause, if any there be, why the said Duponte and Ogata, or either of them, should not be substituted or added as parties defendant to this cause and be made subject to the decree of this court to be entered in accordance with its opinion filed herein on December 27, 1948, and on consideration of the other answers or returns filed herein on divers dates in response to said rule to show cause, and it appearing from the return or answer to said rule filed

by the said Duponte on his own behalf and on behalf of his Deputy, Ogata, that there is no substantial need for continuing or maintaining the above entitled cause of action against either the said Duponte or the said Ogata and therefore no substantial need of substituting or adding them, or either of them, as parties defendant to the above entitled cause, or including them or either of them within the purview of the decree of this court to be entered in accordance with its opinion filed herein on December 27, 1948, and nothing to the contrary appearing in any of the other returns or answers as filed, it is

Ordered that the said rule to show cause be and the same hereby is discharged.

/s/ JOHN BIGGS, JR.,

Circuit Judge,

/s/ DELBERT E. METZGER,

Chief Judge,

/s/ GEORGE B. HARRIS,

District Judge.

[Endorsed]: Filed Mar. 24, 1949.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

DECREE

This cause having come on to be heard before the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States, designated and assigned by the Honorable Fred M. Vinson, The Chief Justice of the United States, to act as a circuit judge in the Ninth Judicial Circuit of the United States and to discharge all the official duties of a circuit judge thereof as appears from the order of designation and assignment, and also designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge of the Ninth Judicial Circuit of the United States, to hold the District Court of the United States for the District of Hawaii as appears from that order of designation and assignment, and before the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, designated and assigned by the Honorable Francis A. Garrecht, Senior United

States Circuit Judge for the Ninth Judicial Circuit of the United States as aforesaid, to hold the District Court of the United States for the District of Hawaii, and before the Honorable Delbert E. Metzger, Senior District (now Chief) Judge of the District Court of the United States for the District of Hawaii, the Honorable Delbert E. Metzger having called to his assistance to hear and to determine the above entitled cause, pursuant to Section 266 of the Judicial Code of 1911, the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States designated and assigned as aforesaid to act as a circuit judge of the Ninth Judicial Circuit of the United States and to discharge all the official duties of a judge of that circuit, and the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, and the Court having reserved for further consideration the applicability of the provisions of Section 266 of the Judicial Code of 1911, stating that all three judges would sit to hear and determine the above entitled cause, and

The Court having proceeded to hearing of the motions filed by defendants on January 14, 1948 and of the application for preliminary injunction, and

The Court on April 19, 1948 having denied defendants' motions save that those portions of the motions going to the dismissal of the actions as to particular defendants were reserved for further consideration, and

As to the application for preliminary injunction, the Court having ruled that it would consider the matters presented by defendants' motions as constituting their return to the order to show cause why such preliminary injunction should not issue, and said application for preliminary injunction having been consolidated for further hearing with the application for a permanent injunction, by agreement of the parties, and this cause having been consolidated for trial with Civil No. 836, and both causes having been set for trial on April 23, 1948, and having come on for trial on that date, and

The defendants at the outset of the trial having taken and having thereafter preserved objections to the entire testimony and exhibits relating to the grand jury, and the Court having reserved for further consideration the question whether such testimony and exhibits should be struck, and

The parties having made various other motions to strike testimony or documentary evidence which were reserved for later disposition, and

The defendants at the end of plaintiffs' direct case having moved to dismiss the action on all of the grounds stated in their previous written motion and on the ground that the proof had not substantially altere dthe case, and the Court having reserved this matter for later disposition, and

The cause having been fully heard on the merits, and the Court having made and filed herein its opinion, containing all necessary findings of fact and conclusions of law as contemplated by Rule

52(a) of the Federal Rules of Civil Procedure, and

The opinion of the Court having been filed on December 27, 1948 and it appearing from the motion and affidavit of Walter D. Ackerman, Jr., Attorney General of Hawaii, that the defendants E. R. Bevins and Wendell F. Crockett, respectively County Attorney and Deputy County Attorney of Maui County, ceased to hold their respective offices on or about January 3, 1949 and that Harold L. Duponte was elected County Attorney for the County of Maui and took office on or about January 3, 1949 and that Thomas Ogata is now Deputy County Attorney for Maui County, and the allegations of the motion and affidavit not having been denied by the plaintiffs and being conceded by all parties to be true, and the said Walter D. Ackerman, Jr., Attorney General of Hawaii having moved to dismiss the action as to the defendants Bevins and Crockett as moot, now therefore,

It Is Hereby Ordered, Adjudged and Decreed That:

1. This decree is rendered by the judges above named as a specially constituted three-judge court under sections 2281 and 2284 of revised Title 28, United States Code, or in the alternative, if these provisions be inapplicable in the United States District Court for the District of Hawaii, then as the United States District Court for the District of Hawaii comprised of three judges sitting en banc.

2. This decree is binding on the defendants Walter D. Ackerman, Jr., individually and as Attorney

General of the Territory of Hawaii, and on Jean Lane, individually and as Chief of Police of the County of Maui, and their respective agents and deputies and their successors in office, and upon the defendants E. R. Bevins and Wendell F. Crockett individually.

3. The action is dismissed as to the defendants E. R. Bevins and Wendell F. Crockett in their respective capacities as County Attorney for the County of Maui and Deputy County Attorney for the County of Maui, they having ceased to hold office on or about January 3, 1949.

4. The action is dismissed as to the defendants Ingram M. Stainback, individually and as Governor of the Territory of Hawaii, Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allen H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom, and Joseph H. Trask, individually and as Grand Jurors of the County of Maui.

5. This decree shall inure to the benefit of the plaintiff International Longshoremen's and Warehousemen's Union, a voluntary, unincorporated as-

sociation and labor union, and to the plaintiff Jack Kawano, as a member of the International Longshoremen's and Warehousemen's Union and in a representative capacity for and on behalf of said International Longshoremen's and Warehousemen's Union and the members thereof.

6. The action is dismissed as to the plaintiff, Territorial Council of the International Longshoremen's and Warehousemen's Union.

7. The defendants' objections as to the testimony and exhibits relating to the grand jury are overruled and the motion to strike the same denied, and all other motions of any of the parties to strike testimony or documentary evidence are denied.

8. The defendants' motion to dismiss the action made at the end of plaintiffs' direct case is denied.

9. All of the defendants' motions made January 14, 1948 and denied April 19, 1948, having been reconsidered are denied.

10: The unlawful assembly and riot law of the Territory of Hawaii, as contained in chapter 277 of the Revised Laws of Hawaii, 1945, is void as unconstitutional.

11. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced July 16, 1947 against the plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, and Shigeyuki Matsuura under any complaint or indict-

ment based on the unlawful assembly and riot statute.

12. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced July 15, 1947, against the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes, under any complaint or indictment based on the unlawful assembly and riot statute.

13. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced August 1, 1947 against the plaintiffs joined as parties by the stipulation of December 31, 1947, to wit, Bartolome Agliam, Guilhermo Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Sutero Unciano, Andres Velasco, and Daniel Kaopuiki, under any complaint or indictment based on the unlawful assembly and riot statute.

14. The plaintiffs shall recover against the de-

fendants their costs herein expended, but shall take nothing by way of damages.

/s/ JOHN BIGGS, JR.,
Circuit Judge.

/s/ DELBERT E. METZGER,
Chief Judge.

/s/ GEORGE B. HARRIS,
District Judge.

Dated: March 29th, 1948.

[Endorsed]: Filed and Entered Mar. 29, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 26th day of April, 1949.

WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii, and JEAN LANE,
individually and as Chief of
Police of the County of Maui,

By /s/ RHODA V. LEWIS,
Assistant Attorney General
Attorney for Walter D. Ack-
erman, Jr., and Jean Lane.

[Endorsed]: Filed April 26, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. R. Bevins and Wendell F. Crockett, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 22nd day of April, 1949.

/s/ E. R. BEVINS,

In Propria Persona.

/s/ WENDELL F. CROCKETT,

In Propria Persona.

[Endorsed]: Filed April 26, 1949.

April 26, 1949.

Bouslog and Symonds,
Attorneys at Law,
Honolulu, T. H.,

Attention: Harriet Bouslog.

Dear Mrs. Bouslog:

In accordance with Rule 73(b) of the F.R.C.P. I am enclosing herewith copies of notice of appeal filed by Walter D. Ackerman, Jr. and Jean Lane, and by E. R. Bevins and Wendell F. Crockett, Appellants in the cause entitled International Longshoremen's and Warehousemen's Union, et al versus Walter D. Ackerman, Jr., et al, Civil 828 of this Court.

Respectfully,

WM. F. THOMPSON, JR.,

Clerk.

By THOS. P. CUMMINS,
Deputy.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, as Principals, and United States Fidelity and Guaranty Company of Baltimore, Maryland, a corporation organized under the laws of the State of Maryland and authorized to

act as surety and do business in the Territory under the provisions of the laws of the Territory of Hawaii, as Surety, are held and firmly bound unto International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union; Jack Kawano, individually and as a member of the ILWU and as President of the Territorial Council of the ILWU, Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elipdio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kuzuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsu-moto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Salorieman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Sutero Unciano, Andres Velasco, and Daniel Kaopuiki, their heirs, executors, administrators, successors or assigns, in the full and just sum of \$250.00, to which payment, well and truly to be made, we bind ourselves, our heirs,

executors and administrators, successors or assigns, jointly and severally by these presents.

Signed and Sealed at Honolulu, T. H., this 26th day of April, 1949.

Whereas, lately at the October, 1948, term of the District Court of the United States in and for the District and Territory of Hawaii, in a suit pending in said court, numbered and entitled as above set forth, a final judgment and decree was rendered against said Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and against Jean Lane, individually and as Chief of Police of the County of Maui, and the said defendants Walter D. Ackerman, Jr. and Jean Lane appeal from said judgment and decree to the United States Court of Appeals for the Ninth Circuit.

Now, Therefore, the condition of the above obligation is such that if the said Walter D. Ackerman, Jr. and Jean Lane shall prosecute their appeal with effect and pay all costs if the appeal is dismissed or said judgment and decree affirmed, or such costs as the appellate court may award if said judgment and decree be modified, then the above obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, the principals and surety

herein named have caused this instrument to be duly executed, on this 26th day of April, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii.

/s/ JEAN LANE.

UNITED STATES FIDELITY
AND GUARANTY COMPANY,

[Seal] By /s/ CALVERT G. CHIPCHASE.
Its Attorney in Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 26th day of April, 1949, before me personally appeared Walter D. Ackerman, Jr., attorney general of the Territory of Hawaii, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed, individually and as such Attorney General.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,
County of Maui—ss.

On this 23rd day of April, 1949, before me personally appeared Jean Lane, to me known to be the person described in and who executed the foregoing

instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ EDWARD K. TAM.

Notary Public, Second Judicial Circuit, Territory of Hawaii.

My commission expires March 10, 1952.

Territory of Hawaii,

City and Counyt of Honolulu—ss.

On this 28th day of April, 1949, before me personally appeared Calvert G. Chipchase, to me personally known, who being by me duly sworn did say that he is the Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 29th day of January, 1948, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation under the authority of its Board of Directors, and said Calvert G. Chipchase acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ WILLIAM B. STEVEN,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires May 8, 1952.

The within bond is hereby approved this 28th day of April, 1949.

/s/ DELBERT E. METZGER,
Judge of the District Court of the United States
in and for the District and Territory of Ha-
wail.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD WITH THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Walter D. Ackerman, Jr.,
Attorney General of the Territory of Hawaii, and
good cause appearing therefor:

It Is Hereby Ordered that the time of all of the
appellants for filing the record on appeal and dock-
eting the appeal with the United States Court of
Appeals for the Ninth Circuit be and the same is
hereby extended to and including July 25, 1949.

Dated at Honolulu, T. H., this 26th day of May,
1949.

/s/ D. E. METZGER,
United States District Judge.

Approved:

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Endorsed]: Filed May 26, 1949.

In the United States District Court
For the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

SUGGESTION FOR INCORPORATION IN
THE RECORD ON APPEAL OF CERTAIN
MATTERS OF RECORD IN THIS COURT

Comes now Walter D. Ackerman, Jr., Attorney

General of Hawaii, for himself as appellant in the above entitled cases and for Jean Lane, Chief of Police of the County of Maui, an appellant in Civil No. 828, by Rhoda V. Lewis, Assistant Attorney General of Hawaii, and hereby presents to the Court as follows:

1. This matter is relevant and material to the question whether in hearing and disposing of the above entitled cases the Court was sitting en banc, and pursuant to Rule 75(h) of the Rules of Civil Procedure and record on appeal should contain the matters herein presented.

2. Footnote 59 of the Court's opinion rendered December 27, 1948, as corrected by the Court subsequent to the filing of the opinion, after referring to the fact that the Honorable J. Frank McLaughlin, Judge of this Court, did not sit in these cases, states:

“* * * This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the number of the court is not reduced below that legally required for the transaction of business.
* * *”

3. It is hereby suggested to the Court that Judge McLaughlin was not disqualified in the above entitled cases nor was he absent from the Territory of Hawaii during any part of the relevant period,

December 1, 1947 to and including May 1, 1948, when the trial of the case was concluded, and during all of said period he was in attendance upon his judicial duties, the same continuing true up to the present time.

4. It is further suggested to the Court that the foregoing facts appear from the records of this Court, in that:

a. There is not on file any certificate of the disqualification of Judge McLaughlin in these cases and the records of this Court do not show that there is or ever was such disqualification.

b. When the opinion of this Court was filed on December 27, 1948 the above cited footnote 59 contained the following statement in reference to Judge McLaughlin:

“* * * The other Judge of the District Court for the District of Hawaii for sufficient reasons deemed himself disqualified to sit in the instant litigations. * * *”

Subsequent to the filing of said opinion said footnote 59 was revised by the Court and the above quoted statement was omitted therefrom. While the Court, by this revision of footnote 59, corrected the error as to the disqualification of Judge McLaughlin contained in the original opinion, there remains in said footnote 59 as so revised a possible question as to whether Judge McLaughlin was absent during the hearing and disposition of these proceedings.

c. The records of this Court show that Judge McLaughlin was not so absent, either from the Territory or from attendance upon his duties.

Wherefore, Walter D. Ackerman, Jr., Attorney General of Hawaii, pursuant to Rule 75(h) of the Rules of Civil Procedure, suggests to the Court that the matters herein stated and in the attached affidavit and letter filed in support hereof, be incorporated in the record on appeal of these cases.

Dated at Honolulu, T. H., June 23, 1949.

WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii,
Appellant herein and as Counsel for Jean Lane, Chief of Police of the County of Maui,
an Appellant in Civil No. 828,

By /s/ RHODA V. LEWIS,
Assistant Attorney General of Hawaii.

[Title of District Court and Causes.]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the Assistant Attorney General of Hawaii and as such, on the 23rd day of June, 1949, did address to William F. Thompson, Clerk of the United States District Court for the District of Hawaii, a letter requesting confirmation of certain facts of record in said court. That on the 23rd day of June, 1949, said William F. Thompson

did reply to said letter by endorsing on the copy thereof his confirmation of facts stated therein, and that the attached is the Clerk's confirmation of the facts stated in affiant's letter.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 23rd day of June, 1949.

[Seal] /s/ AILENE JARRETT,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

[Territory of Hawaii—Seal]

Territory of Hawaii

Department of the Attorney General

Honolulu

January 23, 1949

Mr. William F. Thompson, Jr.

Clerk, U. S. District Court

District of Hawaii

Federal Building

Honolulu, T. H.

Re: Civil Nos. 828 and 836

ILWU v. Ackerman

Dear Sir:

This letter is written in order to obtain confirmation of certain facts of record in your Court, for use in connection with a suggestion that such facts be incorporated in the record on appeal in the above entitled cases.

It is my understanding that the following facts are true and correct, as shown by the records of your Court:

1. There is not on file any certificate of the disqualification of Judge McLaughlin in Civil 828 and 836 or in either of said cases, and the records of your Court do not show that there is or ever was such disqualification.

2. Judge McLaughlin was not absent from the Territory of Hawaii during any part of the period in which these cases were being heard and tried, to wit, December 1, 1947 to and including May 1, 1948, and during all of said period he was in attendance upon his judicial duties, and the same continuing true up to the present time.

If the above are true statements of fact as shown by the records of your Court, will you please reply by stating on a copy of this letter and returning the same to me.

Very truly yours,

/s/ RHODA V. LEWIS,

Assistant Attorney General.

June 23, 1949

To Miss Rhoda V. Lewis,

Assistant Attorney General of Hawaii:

This is to state that the facts above stated in

paragraphs 1 and 2 of your letter are true and correct as shown by the records of this Court.

/s/ WM. F. THOMPSON, JR.,
Clerk, United States District
Court for the District of Ha-
waii.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Causes.]

STIPULATION

It Is Hereby Stipulated by and between the parties to the above entitled proceedings that said proceedings may be consolidated for the purposes of preparation and filing of the records on appeal and docketing of the appeals.

Dated at Honolulu, T. H., this day of June, 1949.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
In Propria Persona for
E. R. Bevins.

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Title of District Court and Causes.]

ORDER

Pursuant to the stipulation of the parties in the above entitled proceedings, It Is Hereby Ordered that said proceedings be and they hereby are consolidated for the purposes of preparation and filing of the records on appeal, and docketing of the appeals.

Dated:

/s/ DELBERT E. METZGER,
U. S. District Judge.

[Endorsed]: Filed June 27, 1949.

In the United States District Court
For the District of Hawaii
Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

WAIVER OF BOND ON APPEAL AS TO AP-
PELLANTS WENDELL F. CROCKETT
AND E. R. BEVINS

Whereas, bond on appeal in the amount of \$250.00
has been furnished and filed by Walter D. Ack-
erman, Jr., individually and as Attorney General of
the Territory of Hawaii, and by Jean Lane, in-
dividually and as Chief of Police of the County of
Maui, Territory of Hawaii, and appellees deem that
an additional bond of Wendell F. Crockett and E.
R. Bevins is not necessary for their security,

Now Therefore, bond on appeal is hereby waived
as to Wendell F. Crockett and E. R. Bevins.

Dated at Honolulu, T. H., July 1st, 1949.

BOUSLOG AND SYMONDS,

By /s/ HARRIET BOUSLOG,

Attorneys for Appellees.

[Endorsed]: Filed July 2, 1949.

ORIGINAL
No. 12301

United States
Court of Appeals
For the Ninth Circuit.

WALTER D. ACKERMAN, JR., individually and as Attorney
General of the Territory of Hawaii,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the
County of Maui, and WENDELL F. CROCKETT, individ-
ually and as Deputy to the County Attorney for the County
of Maui,

Appellants.

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 101

Appeal from the United States District Court for the
Territory of Hawaii

FILED

OCT 14 1949

No. 12301

United States
Court of Appeals
For the Ninth Circuit.

WALTER D. ACKERMAN, JR., individually and as Attorney
General of the Territory of Hawaii.

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the
County of Maui, and WENDELL F. CROCKETT, individ-
ually and as Deputy to the County Attorney for the County
of Maui,

Appellants.

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 101

Appeal from the United States District Court for the
Territory of Hawaii

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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OF RECORD

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Territory of Hawaii,

Iolani Palace,
Honolulu, T. H.

For the Defendants, Walter D. Acker-
man, Jr., et al.

In the United States District Court for the
District of Hawaii

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union;
ANTONIO T. RANIA, individually and as a
member of the ILWU and as President of the
United Sugar Workers, ILWU Local 142, JO-
SEPH KAHLOKULA, LEVI KEALOHA,
BENJAMIN KAHAAWINUI, BENJAMIN
AWANA, LEOCADIO BALDOVI, SOICHI
DOI, YOSHIO NAGATA, LIONEL HANA-
KAHI, JACK HAO, KOICHI ITO, DAVID
KINA, GEORGE KUKAHIKO, CHARLES
REVEIRA, TAKESHI SHIMANO, JOSEPH
SEBASTIN ABREU, RICHARD AH LEE
SAM, FRANK R. ALVARES, LAMBERT
APO, WILLIAM AUWELoa, ALFRED
BOTEILHO, HARRY BOTEILHO, AN-
TONE CALLIDO, THOMAS COELHO,
JOHN CORNIEL, JOHN CRAVALHO,
DANIEL CORNIEL, CALIXTRO CASON,
KIYOTO DOI, ERNEST FEITEIRA,
JAMES BERISTO FLORES, FRANK
FRANCO, JULIO FRANCO, ERNEST FER-
NANDEZ, HIROSHI FUKUSHIMA,
PULEHU FUKUSHIMA, ANTONE GOU-
VEIA, LOUIS HERREIRA, JOSEPH HU,
JUAN HARA, JAMES F. HIGA, EDWARD
GOMES JARDIN, HAI CHOO KIM,

ERNEST KAEA, JOHN KAIO, SOLOMON KEALOHA, MARTIN LACIO, GEORGE LINDSEY, GEORGE MARTINS, FRED CARLOS MEDEIROS, CHARLES PAULOS MONIZ, JOHN NASCIMENTO, BUTA NAKASONE, KIYOTO OGATA, JOHN ORTIZ, LAWRENCE TORRES, PACHECO, ALFRED PERREIRA, RAPHAEL PERRY, MANUEL PERREIRA PICO, HENRY LEOPOLDO PONCE, MANUEL PONCE, JOE PETERS, JOSEPH PONCE, ROSARIO RAMOS, TARIOCHI SASAOKA, HITOSHI SERA, MASAO SERA, LAWRENCE E. SHIROMA, FERMIN SOTO, WILLIAM SAKAIDA, EDWARD TAKEMURA, ROBERT TANIGUCHI, TAKEJI TOMITA, KIYOSHI TOSAKA, ANTONE S. VIERRA, and MASARU YONEDA,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii; INGRAM M. STAINBACK, individually and as Governor of the Territory of Hawaii; E. R. BEVINS, individually and as County Attorney for the County of Maui; WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui, CABLE A. WIRTZ, individually and as Cir-

cuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNEH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui,

Defendants.

COMPLAINT FOR INJUNCTION; COMPLAINT TO REDRESS DEPRIVATION OF CIVIL RIGHTS; REQUEST FOR HEARING BY THREE-JUDGE COURT

Plaintiffs complain of defendants and allege:

I.

That the International Longshoremen's & Warehousemen's Union (hereinafter referred to as ILWU) is a voluntary unincorporated association and labor union, having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as daily wage earners in the sugar, pineapple and longshore

industries. That the plaintiff Antonio T. Rania is a member of said ILWU and the President of the United Sugar Workers, ILWU Local 142 and brings this action individually and in a representative capacity for and on behalf of said ILWU and Local 142 and the members thereof, and in order to protect and obtain the benefits of the Civil Rights Act and the Constitution of the United States of America and the Amendments thereof for its said members and particularly for the other plaintiffs herein.

II.

That plaintiffs Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, James F. Higa, Edward Gomes Jardim, Kim Choo Hai, Ernest Kaea, John Kaio, Solomon Kealoha, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo

Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, and Masaru Yoneda are citizens of the United States. That plaintiffs Leocadio Baldovi, Calixtro Cason, Juan Hara and Martin Lacio are aliens and are citizens of the Philippine Republic; that plaintiff Buta Nakasone is an alien and a citizen of Japan. That all said plaintiffs are residents of the Territory of Hawaii, members of said ILWU, and are employed generally as daily wage earners in the sugar industry of the Territory of Hawaii. That the race of each of said plaintiffs is that set opposite his respective name as follows:

Plaintiff	Race
Joseph Kaholokula	Polynesian (Hawaiian)
Levi Kealoha	Polynesian (Hawaiian)
Benjamin Kahaawinui	Polynesian (Hawaiian)
Benjamin Awana	Polynesian (Hawaiian) (Caucasian)
Leocadio Baldovi	Malayan (Filipino)
Soichi Doi	Mongolian (Japanese)
Yoshio Nagata	Mongolian (Japanese)
Lionel Hanakahi	Polynesian (Hawaiian) (Caucasian)
Jack Hao	Polynesian (Hawaiian)
Koichi Ito	Mongolian (Japanese)
David Kina	Polynesian (Hawaiian)

Plaintiff (Continued)	Race (Continued)
George Kukahiko	Polynesian (Hawaiian)
Takeshi Shimano	Mongolian (Japanese)
Richard Ah Lee Sam	Polynesian (Hawaiian)
	Mongolian (Chinese)
Lambert Apo	Polynesian (Hawaiian)
	Mongolian (Chinese)
William Auwelo	Polynesian (Hawaiian)
Antone Callido	Malayan (Filipino)
	(Puerto Rican)
Calixtro Cason	Malayan (Filipino)
Kiyoto Doi	Mongolian (Japanese)
James Beristo Flores	Polynesian (Hawaiian)
	Malayan (Filipino)
Hiroshi Fukushima	Mongolian (Japanese)
Pulehu Fukushima	Mongolian (Japanese)
Joseph Hu	Polynesian (Hawaiian)
Juan Hara	Malayan (Filipino)
James F. Higa	Mongolian (Japanese)
Kim Choo Hai	Mongolian (Korean)
John Kaio	Polynesian (Hawaiian)
Solomon Kealoha	Polynesian (Hawaiian)
Martin Lacio	Malayan (Filipino)
Buta Nakasone	Mongolian (Japanese)
Kiyoto Ogata	Mongolian (Japanese)
Taroichi Sasaoka	Mongolian (Japanese)
Hitoshi Sera	Mongolian (Japanese)
Masao Sera	Mongolian (Japanese)
Lawrence E. Shiroma	Mongolian (Japanese)
Fermin Soto	Mongolian (Japanese)
William Sakaida	Mongolian (Japanese)

Plaintiff (Continued)	Race (Continued)
Edward Takemura	Mongolian (Japanese)
Robert Taniguchi	Mongolian (Japanese)
Takeji Tomita	Mongolian (Japanese)
Kiyoshi Tosaka	Mongolian (Japanese)
Masaru Yoneda	Mongolian (Japanese)

That the plaintiffs Charles Reveira, Joseph Sebastian Abreu, Frank R. Alvares, Alfred Boteilho, Harry Boteilho, Thomas Coelho, John Cravalho, Ernest Feiteira, Frank Franco, Ernest Fernandez, Antone Gouveia, Edward Gomes Jardim, George Lindsey, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Joe Peters, and Antone S. Vierra are members of the Caucasian race, but are of Portuguese ancestry, and according to the custom and practice of the Hawaiian Islands are considered as non-Caucasians. That plaintiffs John Corniel, Daniel Corniel, Julio Franco, Louis Herreira, John Ortiz, Lawrence Torres Pacheco, Henry Leopoldo Ponce, Manuel Ponce, Joseph Ponce and Rosario Ramos are of Puerto Rican ancestry and are members of mixed Caucasian and Negro races, and according to the custom and practice of the Hawaiian Islands as followed in the United States census classification are considered as non-Caucasians. That plaintiff Ernest Kaea, is of Portuguese-Hawaiian ancestry, and according to the custom and practice of the Hawaiian Islands, as followed in the United States census classification, is considered as a non-Caucasian. That plain-

tiff George Martins is a member of the Caucasian race, but is of Spanish-Puerto Rican ancestry, and according to the custom and practice of the Hawaiian Islands is considered as a non-Caucasian.

III.

That the defendant Walter D. Ackerman, Jr., during all of the times herein mentioned was and now is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii.

That the defendant Ingram M. Stainback during all of the times herein mentioned was and now is the duly appointed, qualified and acting Governor of the Territory of Hawaii.

That the defendant E. R. Bevins during all of the times herein mentioned was and now is the duly elected, qualified and acting County Attorney for the County of Maui.

That the defendant Wendell F. Crockett during all of the times herein mentioned was and now is the duly appointed, qualified and acting Deputy to the County Attorney for the County of Maui.

That the defendant Cable A. Wirtz during all of the time herein mentioned was and now is the duly appointed, qualified and acting Circuit Court Judge and Jury Commissioner of the County of Maui.

That the defendants Augustine Pombo and Claude E. Chatterton during all of the times herein mentioned were and now are the duly appointed, qualified and acting Jury Commissioners of the County of Maui.

That the defendants Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask during all of the times herein mentioned were and now are the duly appointed, qualified and acting Grand Jurors of the County of Maui.

IV.

That plaintiffs bring and maintain this action pursuant to, and the jurisdiction of this court is founded upon, the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

V.

The instant case presents to this court a case and controversy arising under the Constitution and Laws of the United States, and particularly the First, Fifth, Sixth, Fourteenth and Nineteenth Amendments to the Constitution and said Civil Rights Act.

VI.

That plaintiffs herein request that this case be heard and determined by a three-judge court, pursuant to and in conformity with Title 28 USC, Section 380 (Judicial Code, Section 266 amended).

VII.

1) That during all of the time herein mentioned there was and now is a statute of the Territory of Hawaii known as the unlawful assembly and riot statute, being Revised Laws of the Territory of Hawaii, 1945, Chapter 277 Sections 11570-11584, inclusive. That the text of said statute is attached hereto, marked Exhibit A, and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

2) That during all of the times herein mentioned there was and now is a statute in the Territory of Hawaii known as the conspiracy statute being Revised Laws of the Territory of Hawaii 1947, Chapter 243, Sections 11120-11130 inclusive. That the text of said statute is attached hereto marked Exhibit B and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

3) That during all of the times herein mentioned there was and now is in force and effect the Organic Act of the Territory of Hawaii, having as a component part thereof Section 83 relating in part to the composition of juries. That a copy of said Section 83 is attached hereto, marked Exhibit C, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

4) That during all of the times herein mentioned there was and now is in full force and effect as a component part of the Revised Laws of Hawaii, 1945, as amended by the 1945 Session Laws

Section 9791, relating to the qualifications of jurors, both trial and grand jurors, and Section 9812, relating to the challenging of the Grand Jury. That copies of said sections are attached hereto, marked Exhibit D, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

VIII.

That on or about October 16, 1946, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian sugar industry. That the individual plaintiffs, other than Rania, and the various local unions of the ILWU having members employed in the sugar industry were on strike against the sugar industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.

IX.

That on or about December 2, 1947 the defendants Ackerman, Stainback, Bevins and Crockett presented purported criminal charges alleging violation of the said unlawful assembly and riot statute and the conspiracy statute to the defendant Grand Jurors of the County of Maui and said defendant Grand Jurors returned an indictment against the

individual plaintiffs, other than Rania, which indictment was filed in the Circuit Court, Territory of Hawaii, on December 2, 1947 and is criminal number 2365 among the records of said court; that a copy of said indictment is attached hereto and marked Exhibit E and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

X.

That prior to December 2, 1947, said Grand Jury had been chosen, selected, formed and composed by the defendants Wirtz, Pombo and Chatterton, acting as the Grand Jury Commissioners for the County of Maui. That said defendants in so selecting, choosing, forming and composing said Grand Jury had violated various statutory and constitutional provisions referred to above and as more particularly set forth hereinafter.

XI.

That the individual plaintiffs, other than Rania, have been ordered to appear before the defendant Wirtz, as said Circuit Court Judge, on January 8, 1948 to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial unless an order is made and entered herein restraining and enjoining any further proceedings in connection with said criminal proceedings number 2365. That said unlawful assembly and riot statute and said conspiracy statute, and each and every part thereof, are violative of plain-

tiffs' civil rights and of the Constitution of the United States and the Amendments thereto, in the following respects:

1) In that said statutes and each and every part thereof prohibit the free exercise by plaintiffs of their rights of speech, press, assemblage, and of peaceful picketing, in contravention of the First, Fifth and Fourteenth Amendments to the United States Constitution.

2) In that said statutes and each and every part thereof, if enforced against plaintiffs as defendants threaten to do herein, will deprive plaintiffs of their liberty and property without due process of law, in that plaintiffs will be prohibited from exercising their rights of free speech, press and assemblage in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

3) In that said statutes and each and every part thereof constitute a previous restraint upon the free exercise by plaintiffs of their constitutionally protected rights of speech, press and assemblage, in contravention of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and plaintiffs are thus subjected to criminal prosecutions and penalties for the exercise by them of said constitutionally protected rights.

4) In that said statutes and each and every part thereof are criminal statutes and they are so vague, indefinite, arbitrary and unreasonable that they fail to set up any definitely ascertainable standard of guilt, and fail to apprise plaintiffs of what conduct

on their part would subject them to prosecution for violation of said statutes, and therefore said statutes and their attempted enforcement by defendants against plaintiffs deprive said plaintiffs of liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

5) In that said statutes and each and every part thereof deprive plaintiffs of equal rights, privileges and immunities under the law, namely the rights of free speech, press, assemblage and picketing, in violation of the Civil Rights Act hereinabove referred to.

6) In that plaintiffs are forbidden the rights, privileges and immunities of speech, press and assemblage in publicizing the facts of the labor dispute above referred to while the same prohibition is not applied or enforced against the other disputants in the said strike situation, namely, the employer group, or to other groups in the community.

7) In that the said statutes are unconstitutional and void in that they violate the freedom of speech, press and assemblage provisions of the First and Fourteenth Amendments to the Constitution of the United States, and attempt to deprive persons falling within their prohibitions, such as plaintiffs, of liberty and property, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

XII.

That the defendants, other than the defendant Grand Jurors, in permitting said defendant Grand Jurors to consider and return said indictments, and the returning of said indictments, deprived plaintiffs of their rights in violation of the Sixth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, the Civil Rights Act, Section 83 of the Organic Act of the Territory of Hawaii, and Sections 9791 and 9812 of the Revised Laws of the Territory of Hawaii, 1945, in the following respects:

1) Defendants Wirtz, Pombo and Chatterton, as the Grand Jury Commissioners of the County of Maui, formed selected, chose and returned said Grand Jury of the County of Maui in violation of the aforementioned constitutional and statutory provisions in that said defendants deliberately, intentionally and knowingly selected said Grand Jurors from amongst mainly the Caucasian and Employer groups of the County of Maui, the territorial area over which said Grand Jury exercises jurisdiction.

That of said Grand Jurors approximately 76% are members of the Caucasian race and approximately 24% are members of races other than the Caucasian race. That in the population of the County of Maui approximately 74% are members of non-Caucasian races and approximately 26% are members of the Caucasian race.

That of the plaintiffs in this case and who are defendants in said indictment 54 or 61.2% are non-

Caucasians, and 21 or 38.8% are Caucasians of Portuguese nationality.

That of the said defendant Grand Jury approximately 89% are persons other than daily wage earners, namely, they are owners, managers, entrepreneurs, or clerical persons associated with the former groups. That of said Grand Jury approximately 11% are laborers or daily wage earners.

That amongst the Grand Jurors who propose to hear the case against plaintiffs none of them is a farm laborer, although approximately 50% of the employed persons of the County of Maui are farm laborers. That almost all of the individual plaintiffs herein are farm laborers.

That of said Grand Jurors none are women, although in the County of Maui approximately 40% of the population are women.

That defendants Wirtz, Pombo and Chatterton in choosing, selecting, forming and composing the said Grand Jury have thus intentionally, arbitrarily and knowingly selected said Grand Jury from amongst the male, employer, Caucasian elements of the community and have failed to select Grand Jurors from amongst the non-Caucasian, daily wage earner, farm laborer and female portion of the population. That said Grand Jury is not an impartial Grand Jury and it is not a true, fair or reasonable cross-section of the population nor representative of the community in which said Grand Jury sits.

That because of the facts hereinabove alleged,

plaintiffs were deprived of an impartial, representative and democratic Grand Jury, in violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and of the said Civil Rights Act.

2) That said Grand Jury has been selected by said defendants Wirtz, Pombo and Chatterton, acting as Jury Commissioners of the County of Maui, in violation of the provision contained in the Organic Act and Section 9791 of the Revised Laws of Hawaii, 1945, and in violation of 8 USC 44, in that said Grand Jury has been deliberately and intentionally selected by said defendants with regard to race, color and nativity in that a deliberate and overwhelming selection has been made on said Grand Jury of members of the Caucasian race. That said defendants have intentionally, arbitrarily and knowingly completely excluded Filipinos, who are members of the Malayan race, from said Grand Jury, although there are more than 10,000 Filipinos or 18.8% of the population, in the County of Maui, they being the second largest population group in said County of Maui. That there are a number of Filipinos who are qualified and eligible for service on said Grand Jury, but defendants have failed and refused to ever select or place any Filipino on the said Grand Jury of the County of Maui.

3) That the action of defendants Wirtz, Pombo and Chatterton in failing and refusing to put women on the Grand Jury of the County of Maui is a direct violation of the Nineteenth Amendment to the Con-

stitution of the United States. That there has never been a woman on the said Grand Jury of the County of Maui. That there are large numbers of women, residents and citizens of the County of Maui, who are qualified to serve as members of said Grand Jury. That the actions of said defendants in completely excluding women from said Grand Jury constitutes a violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and deprives plaintiffs who are defendants in said unlawful assemblage and riot cases of an impartial, representative and democratic Grand Jury, in violation of their said constitutional rights.

4) That in selecting the aforesaid Grand Jury, the defendants, Wirtz, Pombo and Chatterton, as Jury Commissioners of the County of Maui, have deliberately, intentionally and knowingly misapplied and misenforced Section 83 of the Organic Act of the Territory of Hawaii and Section 9791 of Revised Laws of Hawaii, 1945, in that said defendants have failed and neglected to select a representative, impartial or democratic Grand Jury for the County of Maui in the instant case, but on the contrary have selected a Grand Jury which is representative of only a small segment of the population.

XIII.

That insofar as defendants purport to have selected said Grand Jury in conformity with Section 83 of the Organic Act of the Territory of Hawaii and Chapter 195 of the Revised Laws of Hawaii,

1945, said defendants, acting under color of said statutes, have deprived plaintiffs of a representative, impartial and democratic Grand Jury, in violation of the Civil Rights Act, the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States.

XIV.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assembly and riot statute and said conspiracy statute against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That the case therefore is a proper case for injunctive relief. That plaintiffs have no plain, adequate or speedy remedy at law.

XV.

That on or about, to wit, July 25, 1947, in certain criminal proceedings entitled Territory of Hawaii v. Diego Barbosa, et al., and Territory of Hawaii v. Abraham Makekau, et al., pending in the said Circuit Court of the Second Circuit, the defendants in said criminal proceedings, charged with violation of said unlawful assembly and riot statute, made and filed certain motions and challenges in said Circuit Court wherein said defendants sought the disqualification and dismissal of said Grand Jury (consisting of the same Grand Jurors named as defendants in this action) for the same reasons as hereinabove set forth; that said motions and chal-

lenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XVI.

That the hearings referred to in Paragraph XV, wherein the defendants referred to therein attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived the defendants therein of, and refused to permit the defendants therein to have a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that the defendants therein were denied a full, fair and impartial hearing in connection with said motions and challenges.

XVII.

That by reason of the order of said Judge Cristy as aforesaid, refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof, plaintiffs allege that any motions or challenges seeking the disqualification and dismissal of said Grand Jury upon the grounds hereinabove set forth would have been useless and futile for the reason that the said Circuit Court of the Second Circuit would rule and hold that the said order of Judge Cristy was and is determinative and binding upon the said court with respect to the validity of said Grand Jury and the members thereof; that the evidence upon any motions or challenges herein would have been the same as the evidence presented to said Judge Cristy and the rulings made thereon would have been the same as the rulings made by said Judge Cristy and therefore plaintiffs herein adopt and incorporate herein the said record of the proceedings before said Judge Cristy as aforesaid in support of the allegation that the said Grand Jury was illegally selected and composed; that at no time prior to said Grand Jury being sworn were plaintiffs advised, nor did plaintiffs or any of them know, said Grand Jurors would consider the return of an indictment against any of said plaintiffs.

XVIII.

That it is necessary and imperative that this court assume jurisdiction in the matter and restrain and enjoin defendants from prosecuting or taking any further proceedings in connection with that certain

indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., being Criminal Number 2365 among the records of said court, in order that plaintiffs shall have an impartial, representative and democratic Grand Jury.

XIX.

That thereafter on, to wit, December 1, 1947 said defendants referred to in Paragraphs XIV, XV and XVI herein, together with others, filed a suit in the above entitled court entitled International Longshoremen's & Warehousemen's Union v. Walter D. Ackerman, Jr., et al., being Civil No. 828 seeking to enjoin the defendants therein, who are the same defendants as set forth in this suit except that Jean Lane, individually and as Chief of Police of the County of Maui, is not included, from enforcing the said unlawful assembly and riot statute and prohibiting the submission to or consideration of the charge against said defendants or the return of indictments by the said Maui Grand Jury against said defendants in connection with said unlawful assembly and riot charges.

XX.

That thereafter a temporary restraining order was issued in said action Civil No. 828 by the above entitled court, enjoining the defendants Ackerman, Bevins, Crockett and Wirtz from presenting or submitting the said charges involving violation of the said unlawful assembly and riot statute to any

Grand Jurors of the County of Maui until the convening of a three-judge court to determine the constitutionality of said statute.

XXI.

That the matter in controversy exceeds as to each plaintiff, exclusive of costs or interest, the sum of Three Thousand Dollars (\$3000.00); that as to the plaintiffs ILWU, and Antonio T. Rania, individually and as a member of the ILWU and president of the United Sugar Workers, ILWU Local 142, the value of said property rights and personal liberty to the said plaintiffs to be free to exercise the right to picket without fear of previous restraint and subsequent punishment, is in excess of the sum of Three Thousand Dollars (\$3,000.00). That the said plaintiffs have spent thousands of dollars in the organization and establishment of a trade union organization, which cannot function and exercise the said property rights and personal rights in the Territory or in the County of Maui so long as the members of the said ILWU are subject to indictment and are indicted by an illegally constituted grand jury and subject to prosecution under statutes containing unconstitutional limitations on the right to picket because of the fear and intimidation of the members of said organizations engendered by the threat of punishment for the exercise of these rights guaranteed by the Constitution; that the value of said property rights to each of the individual plaintiffs except Rania and the value of the liberty of

each of the said plaintiffs as hereinabove alleged is in excess of Three Thousand Dollars (\$3,000.00), in that each of the said plaintiffs will be forced, by virtue of the deprivation of these rights, to expend money and incur expenses to defend himself against said charges returned by an illegally constituted grand jury under unconstitutional statutes, and each plaintiff will suffer by virtue of said charges and damages to his good name, reputation and fame; that each of the said plaintiffs except Rania, is informed and believes that standing trial upon said charges will result in the loss of his employment and housing accommodations; that because of the economic structure of the Hawaiian Islands and because of the increasing unemployment, there is not open to said plaintiffs any other source of employment or living accommodations, all to the damage of each of the said plaintiffs in excess of Three Thousand Dollars (\$3,000.00).

Wherefore, plaintiffs, and each of them, pray judgment against defendants, and each of them as follows:

- 1) That a temporary restraining order issue against defendants Ackerman, individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendants Bevins and Crockett, restraining and enjoining said defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., and

being Criminal No. 2365 among the records of said court.

2) That a preliminary and permanent injunction issue against defendants to the same effect.

3) That the court find and make its order and judgment that the said unlawful assembly and riot statute and the said conspiracy statute contravene the Constitution and statutes of the United States.

4) That the court find and make its order and judgment that the manner of selection and the composition of said Grand Jury, and the submission to it of charges against plaintiffs, contravene the Constitution and statutes of the United States.

5) That an order to show cause be directed against defendants, and each of them, directing them to be and appear before this court at a day and hour certain to show cause, if any they might have, why they should not be enjoined as herein prayed for.

6) That this case be heard by a three-judge court.

7) That the plaintiffs have their costs of suit herein, and such other and further relief as is meet and just in the premises.

Dated: Honolulu, T. H., December 31, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ HERBERT RESNER,

Attorneys for Plaintiffs.

Territory of Hawaii

City and County of Honolulu—ss.

Benjamin Kahaawinui, being first duly sworn, deposes and says:

That he is one of the plaintiffs named in the within and foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information or belief, and as to such matters he believes it to be true.

/s/ BENJAMIN KAHAAWINUI.

Subscribed and sworn to before me this 29th day of December, 1947.

[Seal] EILEEN N. FUJIMOTO,

Notary Public in and for the Territory of Hawaii.

My Commission expires July 31, 1951.

EXHIBIT E

Criminal No. 2365

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

January A.D. 1947 Term

TERRITORY OF HAWAII,

vs.

JOSEPH KAHOLOKULA, LEVI KEALOHA,
BENJAMIN KAHAAWINUI, BENJAMIN
AWANA, LEOCADIO BALDOVI, SOICHI
DOI, YOSHIO NAGATA, LIONEL HANA-
KAHI, JACK HAO, KOICHI ITO, DAVID
KINA, GEORGE KUKAHIKO, CHARLES
REVEIRA, TAKESHI SHIMANO, JOSEPH
SEBASTIN ABREU, RICHARD AH LEE
SAM, FRANK R. ALVARES, LAMBERT
APO, WILLIAM AUWELoa, ALFRED
BOTEILHO, HARRY BOTEILHO, AN-
TONE CALLIDO, THOMAS COELHO,
JOHN CORNIEL, JOHN CRAVALHO,
DANIEL CORNIEL, CALIXTRO CASON,
KIYOTO DOI, ERNEST FEITEIRA,
JAMES BERISTO FLORES, FRANK
FRANCO, JULIO FRANCO, ERNEST
FERNANDEZ, HIROSHI FUKUSHIMA,
PULEHU FUKUSHIMA, ANTONE
GOUVEIA, LOUIS HERREIRA, JOSEPH

HU, JUAN HARA, JAMES F. HIGA,
EDWARD GOMES JARDIN, KIM CHOO
HAI, ERNEST KAEA, JOHN KAIO,
SOLOMON KEALOHA, MARTIN LACIO,
GEORGE LINDSEY, GEORGE MARTINS,
FRED CARLOS MEDEIROS, CHARLES
PAULOS MONIZ, JOHN NASCIMENTO,
BUTA NAKASONE, KIYOTO OGATA,
JOHN ORTIZ, LAWRENCE TORRES PA-
CHECO, ALFRED PERREIRA, RAPHAEL
PERRY, MANUEL PERREIRA PICO,
HENRY LEOPOLDO PONCE, MANUEL
PONCE, JOE PETERS, JOSEPH PONCE,
ROSARIO RAMOS, TAROICHI SASAOKA,
HITOSHI SERA, MASAO SERA, LAW-
RENCE E. SHIROMA, FERMIN SOTO,
WILLIAM SAKAIDA, EDWARD TAKE-
MURA, ROBERT TANIGUCHI, TAKEJI,
TOMITA, KIYOSHI TOSAKA, ANTONE S.
VIERRA, MASARU YONEDA,

Defendants.

INDICTMENT

[Endorsed]: Filed S.C.C. Dec. 2, 1947.

First Count—Riot

The Grand Jury of the Second Circuit of the
Territory of Hawaii, do present that
Joseph Kaholokula, Levi Kealoha, Benjamin Ka-
haawinui, Benjamin Awana, Leocadio Baldovi,

Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastian Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to-wit, the 16th day of October, 1946, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror to the public and to others, to-wit, Benedict Nelson Souza,

William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, thereby being unlawfully assembled, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, did unlawfully and maliciously assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, with force and arms and inflict or attempt to inflict corporal injuries to and upon the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, by striking, pushing and shoving the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, the said defendants then and there using menacing language, threats of violence and threatening gestures and making hostile signs and demonstrations against the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, the said defendants by such acts and by the assault on the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, as above alleged, did thereby tend and intend to intimidate and strike terror to the public and to the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, and the defendants further by such acts and such assault on the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, as hereinabove set forth did intimidate, hinder and

prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from crossing a public highway and proceeding to and entering upon the premises wherein they were employed, to-wit, the sugar mill of the Maui Agricultural Company Limited and from engaging in their employment and exercising their trade or occupation and did thereby tend and intend to impoverish them, and the defendants by such acts as are herin set forth did endanger the life or lives, limb or limbs, health or liberty of the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, contrary to the statutes in such cases made and provided.

Second Count—Conspiracy, Third Degree

And in order to set forth the unlawful and felonious acts and transactions mentioned in the First Count hereof in different form and count, in order to meet the proof, the Grand Jury aforesaid do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimanu, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio

Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Take-mura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to-wit, the 16th day of October, 1946, did unlawfully, maliciously and fraudulently combine and mutually undertake, conspire and concert together to commit and to incite, aid and encourage others to commit acts of violence against certain persons, to wit Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, to assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, with force and arms and to inflict corporal injuries to and upon the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, by striking or beat-

ing the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula, and Conrado P. Corden and to intimidate, threaten with violence, hinder and prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, from proceeding to and entering upon the premises wherein they were employed, to wit, the sugar mill of the Maui Agricultural Company, Limited, and to intimidate, hinder and prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from engaging in their employment on such premises and by such acts as aforesaid, to unlawfully prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from exercising their trade or occupation and to impoverish them, and the said defendants did then, there and thereby commit a Conspiracy in the Third Degree, contrary to the form of the statutes in such cases made and provided.

A True Bill found this 2nd day of December, 1947.

/s/ E. S. ELMORE,

Foreman of the Grand Jury.

WENDELL F. CROCKETT,

Prosecuting Officer, County
of Maui.

[Endorsed]: Filed U.S.D.C. Dec. 10, 1947.

[Title of District Court and Cause.]

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner & Sawyer, and Herbert Resner, plaintiffs' attorneys, whose address is: 206 Terminal Building, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Date: Dec. 31, 1947.

Note: This summons is issued pursuant to Rule 4 of the Federal Rules Civ. Proc.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the reading, filing and consideration of the verified complaint herein praying for an order directed to the defendants above named to appear before the above entitled court on a day certain and show cause why a preliminary injunction should not be granted herein, enjoining and restraining

defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and the defendant E. R. Bevins, individually and as County Attorney for the County of Maui and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., and being Criminal No. 2365 among the records of said court, upon the ground that the unlawful assembly and riot statute and the conspiracy statute of the Territory of Hawaii contravene the Constitution and statutes of the United States and upon the further ground that the manner of selection and the composition of the Grand Jury of the County of Maui, Territory of Hawaii which indicted said plaintiffs contravene the Constitution and statutes of the United States, and

It further appearing to the court from said complaint that the individual plaintiffs, other than Antonio T. Rania, have been ordered to appear before the defendant Cable A. Wirtz, as Judge of the Second Circuit, on January 8, 1948 to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial unless an order is made and entered herein restraining and enjoining any further proceedings in connection with said criminal proceedings number 2365, and

It further appearing to the court that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of Title 28 USC Section 380 (Judicial Code 266, Amended) and the court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that the defendants above named be and they are hereby ordered to appear before the undersigned United States District Court Judge in his Courtroom, Federal Building, Honolulu, T. H., on the 6th day of January, 1948, at the hour of 10:00 a.m. to show cause if any they have, why a temporary restraining order should not be issued herein enjoining and restraining defendants as prayed for in said complaint until the convening, hearing and determination of the motion for a preliminary injunction as prayed for in the complaint by a three-judge court.

Dated: December 31, 1947, 11:00 a.m., Honolulu, T. H.

/s/ D. E. METZGER,
U. S. District Judge.

United States Marshal's Return.

The within Summons, Order To Show Cause and Temporary Restraining Order, was received by me on the 31st day of December, A.D. 1947, and is returned executed as follows:

On December 31, 1947, personal service was made upon Walter D. Ackerman, Jr., individually and as

Attorney General of the Territory of Hawaii, by handing to and leaving with him personally a true copy of the Summons, Order to Show Cause and Temporary Restraining Order;

On January 2, 1947, upon E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui; Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; Augustine Pombo and Claude E. Chatterton, both individually and as Jury Commissioners of the County of Maui, by handing to and leaving with Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, at the request of the above named defendants, true copies of the Summons, Order to Show Cause and Temporary Restraining Order.

Returned unserved as to Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S., S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask, individually and as Grand Jurors of the County of Maui, at the request of the attorneys for the plaintiffs.

Dated at Honolulu, T. H. this 5th day of January,
A.D. 1948.

/s/ OTTO F. HEINE,
U. S. Marshal,
District of Hawaii.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Come now the defendants above named (other than the persons named individually and as Grand Jurors of the County of Maui, who have not been served), and for their return to the order to show cause issued herein on December 31, 1947, show:

I.

The Court has no jurisdiction to issue a temporary restraining order, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union and Antonio T. Rania, have any right to or need of a temporary restraining order, only the seventy-five individual plaintiffs (other than Rania) being in any way involved in the pending criminal prosecution.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to

each of said seventy-five individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficiently definite and certain to justify a temporary restraining order.

II.

The Court has no jurisdiction to issue a temporary restraining order, and there is no showing warranting equitable relief in a federal court, in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by chapters 243 and 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff union and Antonio T. Rania, no right to or need of a temporary restraining order is shown.

III.

According to the allegations of the complaint, the questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as impaneled at the time of the indictment (Exhibit E attached to the complaint) are *res judicata*, by reason of the order of the Honorable Albert M. Cristy on the motions and challenges to said Grand Jury mentioned in paragraph XV of the complaint. As shown by Exhibit E filed on December 8, 1947 in Civil No. 828 in this Court and made a part hereof by reference (such Civil No. 828 being the cause entitled *International Long-*

shoremen's & Warehousemen's Union, et al vs. Walter D. Ackerman, Jr., et al, referred to in paragraph XIX of the complaint), the same questions have been heard and determined by a territorial court of competent jurisdiction, but on motions and challenges made by different parties. By their complaint the plaintiffs have voluntarily adopted the record and decision on the motions and challenges made by other persons with the same effect as if made in their own case. As a matter of law, the complaint fails to show any reason why said record and decision are binding upon these plaintiffs other than their own voluntary adoption thereof.

IV.

No sufficient grounds to collaterally attack the decision of the Honorable Albert M. Cristy are shown. This Court has no jurisdiction to review the rulings of said judge, such review being confined to and available in a court of appellate jurisdiction.

V.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby failing to afford defendants notice of the grounds upon which the temporary restraining order is sought.

VI.

The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice. By voluntarily adopting the record and decision in the matter of the grand jury challenges already heard plaintiffs have waived their rights under said laws.

VII.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

VIII.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as impaneled at the time of the indictment (Exhibit E attached to the verified complaint) is attacked by the complaint for failure to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, and in so far as the order of Judge Cristy is attacked for failure to comply with section 9812 of the Revised Laws of Hawaii 1945, such allegations do not present federal questions.

IX.

The questions sought to be raised in this proceeding as to the constitutionality of chapter 277 of the

Revised Laws of Hawaii 1945 are *res judicata*, for as shown by Exhibit F filed on December 8, 1947 in Civil No. 828 and made a part hereof by reference, and by Exhibit F-1 hereto attached, the constitutionality of such statute was litigated in the criminal proceeding which plaintiffs now seek to restrain by the defendants therein, being substantially the same parties as the plaintiffs herein, and the constitutionality thereof was upheld by the Supreme Court of the Territory of Hawaii, but the form of the indictment having been held defective, a new indictment was returned on December 2, 1947.

X.

This Court has no jurisdiction to review the said rulings of the Supreme Court of Hawaii, such review being confined to and available in the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States.

XI.

The complaint fails to state a substantial federal question as to the constitutionality of chapters 243 and 277 of the Revised Laws of Hawaii 1945, in that said statutes do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said laws are not vague or indefinite.

XII.

The complaint fails to state a substantial federal question as to the constitutionality of chapters 243

and 277 of the Revised Laws of Hawaii 1945 in that:

1. In so far as the seventy-five individual plaintiffs (other than Rania) are concerned, the complaint fails to allege that at the time of the occurrences referred to in the indictment (Exhibit E attached to the complaint) said plaintiffs were engaged in peaceful picketing or peaceable assembly, and the complaint fails to show that freedom of the press is in any way involved.

2. In so far as the remaining plaintiffs are concerned, the allegations of the complaint do not present a justiciable controversy concerning enforcement of said laws.

XIII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

XIV.

A judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain

and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

XV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, or by any of the Jury Commissioners, individually or in their official capacity, and the complaint wholly fails to show a right to a temporary restraining order against them.

XVI.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the union or Antonio T. Rania.

Wherefore, said defendants pray:

1. That the court deny the motion for a temporary restraining order.
2. That the Court find and decide that the complaint presents no substantial federal question concerning the validity of a statute of the Territory, and that the Court deny the request for a court of three judges.

Dated at Honolulu, T. H., this 6th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

[Title of District Court and Cause.]

AFFIDAVIT OF RHODA V. LEWIS
ASSISTANT ATTORNEY GENERAL

Territory of Hawaii,

City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the duly qualified and acting Assistant Attorney General of the Territory of Hawaii, and as such is one of the attorneys for the defendants making return to the order to show cause in the above entitled matter, and also as such is a prosecuting officer of the Territory of Hawaii.

That the opinion of the Supreme Court of the Territory of Hawaii, rendered November 26, 1947, entitled Territory of Hawaii vs. Joseph Kaholokula, et al, a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court, and made a part hereof by reference, was rendered in the same criminal case as is the subject of the complaint herein, being Criminal No. 2365 in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii. That said opinion of the Supreme Court of the Territory of Hawaii reviewed the overruling of a demurrer or motion to quash filed by substantially the same persons as are the plaintiffs in this cause, to challenge the sufficiency of an indictment for riot and unlawful assembly. That as the opinion of the Supreme Court of the Territory of Hawaii shows said demurrer or motion to quash

involved the constitutionality of the unlawful assembly and riot statutes of the Territory and also involved the form of said indictment. As further appears from said opinion, the Supreme Court of the Territory upheld the constitutionality of said criminal laws but found the form of the indictment fatally defective.

That accordingly, said case, Criminal No. 2365, was again brought before the Grand Jury on December 2, 1947 and a new indictment returned on said day, being Exhibit E attached to the complaint in this cause. That the seventy-five persons named in said indictment of December 2, 1947 are the same persons who litigated the constitutionality of the unlawful assembly and riot statutes of the Territory of Hawaii as aforesaid, except that four persons named in the former indictment were not included in the indictment of December 2, 1947, and one person named in the indictment of December 2, 1947 was not named in the former indictment.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 6th day of January, 1948.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Jan. 6, 1948.

From the Minutes of the United States District
Court for the District of Hawaii

Tuesday, January 6, 1948

[Title of Cause.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis and Mr. Robert Griffith, Deputy Attorneys General, Territory of Hawaii, counsel for the defendants herein. This case was called for hearing on the return to the order to show cause.

At 10:10 a.m., argument was had by Miss Lewis.

At 11:10 a.m., argument was had by Mrs. Bouslog, followed at 11:50 a.m., by Miss Lewis in her closing argument.

Thereafter, the Court granted the prayer of the complaint for hearing by a three-judge court of the merits herein and ordered a temporary restraining order issued.

[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND
ORDER GRANTING REQUEST FOR
THREE-JUDGE COURT

The order issued on December 31, 1947 directed to the defendants to show cause why a temporary restraining order should not be entered herein enjoining and restraining defendants as prayed for in said complaint until the convening, hearing and

determination of the motion for a preliminary injunction as prayed for in the complaint herein and the return to said order to show cause, having come on regularly for hearing before the undersigned District Court Judge at his courtroom, Federal Building, Honolulu, T. H., on January 6, 1948 at the hour of 10:00 a.m., and the plaintiffs appearing by Harriet Bouslog, Myer C. Symonds and Gladstein, Andersen, Resner and Sawyer by Harriet Bouslog and Myer C. Symonds, their attorneys, and the defendants appearing by Rhoda V. Lewis, Assistant Attorney General, Territory of Hawaii, and Robert Griffith, Deputy Attorney General, their attorneys and the matter having been orally argued and submitted to the Court for decision, and

It appearing to the court that the plaintiffs seek a temporary restraining order against the defendant, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendant E. R. Bevins, individually and as County Attorney for the County of Maui, and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney of Maui restraining and enjoining said defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii, entitled Territory of Hawaii v. Joseph Kaholokula, et al., and being Criminal No. 2365 among the records of said court, and

It further appearing to the Court that the complaint herein presents substantial federal questions, including the alleged invalidity of the unlawful assembly and riot statute of the Territory of Hawaii and the conspiracy statute of the Territory of Hawaii, and

It further appearing to the court from Title 28 USC 380 (Judicial Code Section 266, Amended) that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of said section 266 of the Judicial Code, and that this is a proper case for the convening of a three-judge court pursuant to such statute, and

It further appearing to the court that pending the convening and hearing of said application for a preliminary injunction by a three-judge court, the individual plaintiffs, other than Antonio T. Rania, will be required to appear before the defendant Cable A. Wirtz, as Judge of the Second Circuit, to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial and thereby a change in the status quo will be effected before a three-judge court can be convened, and the plaintiffs will be subjected to the danger of conviction and sentence for violation of said unlawful assembly and riot statute and said conspiracy statute, and the Court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that pending the convening, hearing and determination of the motion for a preliminary injunction as prayed for in the complaint by a three-judge court that the defendant Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendant E. R. Bevins, individually and as County Attorney for the County of Maui, and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney of Maui, be and they are hereby restrained and enjoined from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court of the Second Circuit, Territory of Hawaii, entitled, Territory of Hawaii v. Joseph Kaholokula, et al., and being criminal No. 2365 among the records of said court.

Dated at Honolulu, T. H., this 9th day of January, 1948, at 9:30 a.m.

/s/ D. E. METZGER,

U. S. District Judge.

United States Marshal's Return
District of Hawaii

The within Temporary Restraining Order was received by me on the 9th day of January, A.D. 1948, and the same was returned duly executed on the 10th day of January, A.D. 1948, by personally handing to and leaving with Walter D. Ackerman, Jr., individually and as Attorney General of the

Territory of Hawaii a true copy of the Temporary Restraining Order and Order Granting request for Three-Judge Court.

Dated at Honolulu, T. H. this 10th day of January, A.D. 1948.

/s/ OTTO F. HEINE,
U. S. Marshal,
District of Hawaii.

[Endorsed]: Filed Jan. 14, 1948.

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Temporary Restraining Order on the therein-named E. R. Bevins, County Attorney, County of Maui and Wendell F. Crockett, Deputy to the County Attorney for the County of Maui at Wailuku, Maui by handing to and leaving a true and correct copy thereof with E. R. Bevins, County Attorney, County of Maui and Wendell F. Crockett, Deputy to the County Attorney for the County of Maui personally at Wailuku, Maui, in said District on the 10th day of January, A.D. 1948.

OTTO F. HEINE,
U. S. Marshall.

By /s/ RUSSEL A. NEWLAND,
Deputy.

[Endorsed]: Filed Jan. 9, 1948.

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATE-
MENT, MOTION TO DISMISS ACTION
AND FOR SUMMARY JUDGMENT

Come now the defendants above named (other than the persons named individually and as Grand Jurors of the County of Maui, who have not been served), and pursuant to Rules 10(b), 12 and 56 of the Rules of Civil Procedure move this Honorable Court as follows:

I.

Defendants move the Court for an order requiring plaintiffs to make a more definite statement as to certain matters in the complaint, to wit:

1. Paragraph VIII of the complaint reads as follows:

“VIII.

That on or about October 16, 1946, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian sugar industry. That the individual plaintiffs, other than Rania, and the various local unions of the ILWU having members employed in the sugar industry were on strike against the sugar industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.”

The last sentence of said paragraph does not inform the defendants at what particular time or times during the strike against the sugar industry, they were engaged in peaceful picketing, and defendants desire the particulars thereof as to each individual plaintiff (other than Rania), in relation to the time of occurrence of the events averred in the indictment against him, which indictment is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

2. Paragraphs XV and XVI of the complaint read as follows:

“XV.

That on or about, to wit, July 25, 1947, in certain criminal proceedings entitled Territory of Hawaii v. Diego Barbosa, et al., and Territory of Hawaii v. Abraham Makekau, et al., pending in the said Circuit Court of the Second Circuit, the defendants in said criminal proceedings, charged with violation of said unlawful assembly and riot statute, made and filed certain motions and challenges in said Circuit Court wherein said defendants sought the disqualification and dismissal of said Grand Jury (consisting of the same Grand Jurors named as defendants in this action) for the same reasons as hereinabove set forth; that said motions and challenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of

said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XVI.

That the hearings referred to in Paragraph XV, wherein the defendants referred to therein attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived the defendants therein of, and refused to permit the defendants therein to have a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that the defendants therein were denied a full, fair and impartial hearing in connection with said motions and challenges."

Said paragraphs do not inform the defendants wherein the Honorable Albert M. Cristy prejudged or predetermined the motions and challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, presented by Diego Barbosa et al and Abraham Makekau et al in the cases mentioned by them, or wherein the movants therein were denied a full,

fair and impartial hearing. Defendants desire the particulars thereof, with references to the record in the matter of said Grand Jury motions and challenges.

II.

Defendants move this Court for an order requiring plaintiffs to make a more definite statement of their several claims, so as to state in a separate count each claim founded upon a separate transaction or occurrence, to wit:

1. To state in a separate count the alleged claim of the seventy-five individual plaintiffs (other than Antonio T. Rania) for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and to specify therein the defendants against whom such relief is claimed.

2. To state in a separate count the alleged claim of the plaintiff union and Antonio T. Rania for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and to specify therein the defendants against whom such relief is claimed.

3. To state in a separate count the alleged claim of the plaintiffs for relief on account of the alleged selection and composition of the Grand Jury, and to specify therein the defendants against whom such relief is claimed.

III.

Defendants move the Court to dismiss the action for lack of jurisdiction over the subject matter, because the matter in controversy does not exceed

three thousand dollars exclusive of interest and costs as to each of the plaintiffs or any of them, and specifically:

1. The allegations of the complaint relating to the jurisdictional amount are not well founded in law.

2. The allegations of the complaint relating to the jurisdictional amount are not sufficiently definite and certain.

3. Defendants controvert, as to each and every plaintiff, the allegations of the complaint concerning the jurisdictional amount, and hereby put said plaintiffs to their proof thereof.

IV.

Defendants move the Court to dismiss so much of the complaint as purports to allege, in favor of the seventy-five individual plaintiffs (other than Rania), a claim for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. The complaint fails to show that said plaintiffs are threatened with more than one criminal proceeding, or that anything at all is involved other than prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

6. The questions sought to be raised in this proceeding as to the constitutionality of the unlawful assembly and riot statute are *res judicata*, for as shown by Exhibit F filed on December 8, 1947 in Civil No. 828 and made a part hereof by reference, and by Exhibit M hereto attached, the constitutionality of such statute was litigated in the criminal proceeding which plaintiffs now seek to restrain by the defendants therein, being substantially the same parties as the plaintiffs herein, and the constitutionality thereof was upheld by the Supreme Court of the Territory of Hawaii, but the form of the indictment having been held defective, a new indictment was returned on December 2, 1947.

7. This Court has no jurisdiction to review the

said rulings of the Supreme Court of Hawaii, such review being confined to and available in the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States.

8. The complaint fails to show that the prohibitions contained in said unlawful assembly and riot statute and said conspiracy statute will impose on the plaintiffs great and immediate irreparable injury with respect to their rights to improve employment conditions or any other rights.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events averred in the indictment against them, which indictment is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute and said conspiracy statute do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statutes are not vague or indefinite, and that said statutes are constitutional and valid.

13. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

V.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim of the plaintiff union and Antonio T. Rania for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. Plaintiff union is not entitled to prosecute this suit under the Civil Rights Act of the United States.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court

of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that said plaintiffs, if they do not obtain equitable relief, will suffer great and immediate irreparable injury.

5. The allegations of the complaint do not present a justiciable controversy concerning future enforcement of the unlawful assembly and riot statute and the conspiracy statute, in cases not now pending.

6. The complaint fails to show that the union members whom plaintiffs seek to represent will be subjected to further prosecutions under said unlawful assembly and riot statute and said conspiracy statute, other than the pending criminal proceedings.

7. The complaint fails to show that the defendant prosecuting officers of the Territory of Hawaii propose to prosecute plaintiffs' members for peaceful picketing or peaceable assemblage, or for the exercise of their constitutional rights of free speech, press, or assemblage.

8. No allegations showing that the plaintiffs' members are subject to further prosecutions under said unlawful assembly and riot statute and said conspiracy statute could be made without showing intent to engage in wrongful conduct, depriving the plaintiffs of the right to equitable relief under the maxim that "he who comes into equity must come with clean hands."

9. The complaint fails to show any reason why

this Court should interfere with the pending criminal proceedings by undertaking to adjudicate the issues concerning the constitutionality of the unlawful assembly and riot statute and the conspiracy statute.

10. The complaint shows on its face that said unlawful assembly and riot statute and said conspiracy statute do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statutes are not vague or indefinite, and that said statutes are constitutional and valid.

11. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula et al, No. 2657", a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

12. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the perform-

ance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

VI.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim for relief on account of the alleged selection and composition of the 1947 Grand Jury, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. It appears upon the face of the complaint that there is involved only one criminal prosecution, now pending.

6. The complaint fails to allege or show any invalidity in the laws governing the selection and composition of the Grand Jury, or in the rules of the Supreme Court of Hawaii relating to Grand Juries, a copy of said rules being hereto annexed, marked Exhibit N, and made a part hereof by reference.

7. The allegations of the complaint that the rulings of the Honorable Albert M. Cristy in the Barbosa and Makekau cases are binding on these plaintiffs are not well founded in law.

8. It appears upon the face of the complaint that these plaintiffs have not presented and will not endeavor to present to the Circuit Court of the Second Circuit, wherein the indictment against them is pending, their objections to the selection and composition of the 1947 Grand Jury, and that accordingly they have waived such objections.

9. In the alternative, if plaintiffs have not waived their objections to the selection and composition of said 1947 Grand Jury, nevertheless the complaint fails to present a justiciable controversy relating thereto.

10. In the alternative, if plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings of the Honorable Albert M. Cristy in the Barbosa and Makekau cases, as applicable in their case, they have thereby waived their challenge of said judge for bias and prejudice, which they seek to assert in this Court.

11. Assuming, without conceding, that plaintiffs

may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the questions sought to be raised in this case as to the selection and composition of said 1947 Grand Jury are res judicata; this Court has no jurisdiction to review the said rulings, such review being confined to and available in the Supreme Court of Hawaii, the Circuit Court of Appeals of the Ninth Circuit, and the Supreme Court of the United States.

12. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint shows that plaintiffs have failed to exhaust their remedies by appeal, and fails to show any ground for collateral attack.

13. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint fails to show such direct pecuniary interest in the judge making such rulings as would show lack of due process.

14. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the record in said Barbosa and Makekau cases, incorporated by paragraph XVI of the complaint,

fails to show denial of any right secured to the plaintiffs by the Constitution and laws of the United States; on the contrary said record affirmatively shows: (a) that thirty-one persons on the 1947 Grand Jury list were, by blood or intermarriage, of the same races or mixtures of races as the plaintiffs; (b) that six persons on the 1947 Grand Jury list were members of the plaintiff, International Longshoremen's & Warehousemen's Union; (c) that the exclusion of women was expressly required by section 83 of the Hawaiian Organic Act, which the complaint does not assert to be invalid; and (d) that the Jury Commissioners conscientiously and impartially performed their duties as, appears from the portion of said record hereto annexed as Exhibit O and made a part hereof by reference, and from the whole of said record.

15. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint, in alleging the failure of the Jury Commissioners and Judge Cristy to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, does not present federal questions.

VII.

Defendant Cable A. Wirtz, individually and as Circuit Court Judge of the County of Maui, moves the Court to dismiss the action as to him, on the following grounds:

1. The complaint fails to state a claim for relief against him.

2. A judge of a circuit court of the Territory of Hawaii cannot properly be made party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

VIII.

Defendants Cable A. Wirtz, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, move the Court to dismiss the action as to them on the ground that the complaint fails to state a claim for relief against them.

IX.

Defendants move the Court to dismiss the persons named individually and as Grand Jurors of the County of Maui, on the following grounds:

1. There has been a misjoinder of parties; the grand jurors of a circuit court of the Territory of Hawaii cannot properly be made parties to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court.

2. Said persons have not been served with the process of this Court.

Wherefore, defendants pray:

a. That the action be dismissed.

b. That summary judgment be entered for the defendants.

c. That if the action be not wholly dismissed, or if summary judgment be not entered for the defendants upon the whole case, that the action be dismissed as to certain of the defendants, and that plaintiffs be required to make certain matters in the complaint more definite, and that plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded upon a separate transaction or occurrence.

Dated at Honolulu, T. H., this 20th day of January 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

WENDELL F. CROCKETT,

Deputy County Attorney,

County of Maui.

Attorneys for Defendants
(other than the persons
named individually and
as Grand Jurors of the
County of Maui, who have
not been served).

[Title of District Court and Cause.]

NOTICE

To Harriet Bouslog, Myer C. Symonds, Gladstein,
Andersen, Resner and Sawyer, and Herbert
Resner,

Attorneys for the Plaintiffs,

Please take notice that the foregoing motions will be presented before the three-judge court convened in accordance with section 266 of the Judicial Code, as provided by order of the Honorable D. E. Metzger, judge of the above entitled court, made January 9, 1948, immediately upon the convening of said court for the hearing of this cause at the Federal Building, Honolulu, Territory of Hawaii, or as soon thereafter as counsel can be heard.

Dated at Honolulu, T. H., January 20, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

WENDELL F. CROCKETT,

Deputy County Attorney,

County of Maui.

Attorneys for Defendants
(other than the persons
named individually and
as Grand Jurors of the
County of Maui, who have
not been served).

EXHIBIT M

[Title of District Court and Cause.]

AFFIDAVIT OF RHODA V. LEWIS,
ASSISTANT ATTORNEY GENERAL

Territory of Hawaii,
City and County of Honolulu, ss.

Rhoda V. Lewis being first duly sworn deposes and says: That she is the duly qualified and acting Assistant Attorney General of the Territory of Hawaii, and as such is one of the attorneys for the defendants making return to the order to show cause in the above entitled matter, and also as such is a prosecuting officer of the Territory of Hawaii.

That the opinion of the Supreme Court of the Territory of Hawaii, rendered November 26, 1947, entitled Territory of Hawaii vs. Joseph Kaholokula, et al, a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court as Defendants' Exhibit F and is made a part hereof by reference, was rendered in the same criminal case as is the subject of the complaint herein, being Criminal No. 2365 in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii. That said opinion of the Supreme Court of the Territory of Hawaii reviewed the overruling of a demurrer or motion to quash filed by substantially the same persons as are the plaintiffs in this cause, to challenge the sufficiency of an indictment for riot and unlawful assembly. That as the opinion of the Supreme Court of the Territory of Hawaii shows said demurrer or motion to quash involved the constitutionality of the unlawful assembly and riot statutes of the

Territory and also involved the form of said indictment. As further appears from said opinion, the Supreme Court of the Territory upheld the constitutionality of said criminal laws but found the form of the indictment fatally defective.

That accordingly, said case, Criminal No. 2365, was again brought before the Grand Jury on December 2, 1947 and a new indictment returned on said day, being Exhibit E attached to the complaint in this cause. That the seventy-five persons named in said indictment of December 2, 1947 are the same persons who litigated the constitutionality of the unlawful assembly and riot statutes of the Territory of Hawaii as aforesaid, except that four persons named in the former indictment were not included in the indictment of December 2, 1947, and one person named in the indictment of December 2, 1947 was not named in the former indictment.

/s/ RHODA V. LEWIS,

Subscribed and sworn to before me this 19th day of January, 1948.

[Seal)

/s/ AILENE JARRETT,

Notary Public, First Judicial
Circuit, Territory of Hawaii.

My Commission expires June 30, 1949.

EXHIBIT N

In the Supreme Court of the Territory of Hawaii

Rule 18 of the Rules of the Supreme Court
as amended Feb. 14, 1947, and March 27,
1947.

18. Rules Relating to Grand Juries.

A. When Required.

“No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.” U. S. Const. Amend. Art. 5.

B. How Drawn.

“Until otherwise provided by the legislature of the Territory grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries.” Org. Act, Sec. 83.

C. Qualifications of Jurors.

“No person who is not a male citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii,” “and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors.” Org. Act, Sec. 83.

D. Number of Jurors.

The number of grand jurors in each circuit shall

be not less than thirteen nor more than twenty-three. (See Org. Act, Sec. 83, and R. L. H. 1935, Sec. 2404.)

E. Sessions.

“Until otherwise provided by the legislature of the Territory, grand juries * * * shall sit at such times as the circuit judges of the respective circuits shall direct.” Org. Act, Sec. 83.

F. Challenges.

Before the grand jury retires, the prosecuting officer or any person held to answer a charge for a criminal offense may challenge the panel or an individual juror for cause to be assigned to the court. All such challenges shall be tried and determined by the court.

G. Foreman.

From the persons summoned to serve as grand Jurors and appearing the court shall appoint a foreman and may remove him for cause. The court may appoint another foreman when the necessity arises.

H. Oath of Grand Jurors.

Substantially the following oath shall be administered to the grand jurors:

“You, and each of you, do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service; that you will present no one through envy,

hatred, or malice, nor leave any one unrepresented through fear, favor, affection, gain, reward or hope therefor, but will present all things truly, as they come to your knowledge, according to the best of your understanding; and that you will keep secret the proceedings had before you.”

I. Charge of the Court.

The grand jury, being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the jury when the necessity arises.

J. Officer in Attendance.

The court may appoint an officer to attend upon the grand jury.

K. Retirement of the Grand Jury.

The grand jury shall then retire to a private room and inquire into the offenses cognizable by them.

L. Clerk.

The grand jury may appoint one of their number to be their clerk, to preserve minutes of the proceedings before them, which minutes shall be delivered to the prosecuting officer, when so directed by the grand jury.

M. Subpoena of Witnesses.

“The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts.” Org. Act, Sec. 83.

N. Swearing Witnesses.

Witnesses appearing before the grand jury may be sworn in open court or by the foreman of the grand jury, or, in his absence, by any member thereof.

The oath or affirmation may be substantially as follows:

“You do solemnly swear (or affirm) that the evidence which you shall give before the grand jury shall be the truth, the whole truth, and nothing but the truth.”

O. Presence of Others With Jurors.

The prosecuting officer or any member of the grand jury may interrogate witnesses before the grand jury. The prosecuting officer shall advise the grand jury in regard to the law of the cases that come before them, and draw the indictments. An interpreter may be present at the examination of witnesses before the grand jury upon request of the foreman. The circuit judge before whose court the grand jury is in attendance may, upon request of the foreman of the grand jury, assign an official circuit court reporter to attend and report the testimony given by the witnesses before the grand jury and who shall furnish the prosecuting officer with a transcript of such testimony when so directed by the foreman of the grand jury. The interpreter and the reporter shall keep secret all proceedings of the grand jury. Except the prosecuting officer and his assistant, the shorthand reporter, the interpreter, and the witness under examination, no person shall

be permitted to be present during the session of the grand jury. No person except the members of the grand jury shall be permitted to be present during the expression of their opinions or the giving of their votes.

P. Twelve Grand Jurors to Concur.

No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors.

Q. Endorsement by Foreman and Prosecuting Officer.

An indictment when found shall be endorsed, "A true bill," and such endorsement shall be signed by the foreman. An indictment shall be endorsed also by the prosecuting officer. A presentment, when made, shall be signed by the foreman.

R. Presenting and Filing.

Indictments or presentments, when found, shall be presented by the foreman, in the presence of other grand jurors, to the court, and shall there be filed; but such as are found for a felony against any person not in custody or under recognizance shall not be open to the inspection of any person except the prosecuting officer until the defendant therein shall have been arrested; provided, however, that upon the filing of any such indictment the court may, for the purpose of extradition or for other cause presented by the prosecuting officer to be in the public interest, order that such indictment against a person not in custody or under recog-

nizance be open to such inspection as the court shall direct.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated, at Honolulu, T. H., Jan. 16, A. D. 1948.

[Seal] /s/ LEOTI V. KRONE,
Clerk, Supreme Court,
Territory of Hawaii.

[Endorsed]: Filed Jan. 20, 1948.

Item 56.

[Note]: Exhibit O, being pages 149 to 162 of the original transcript of the grand jury hearing in the Second Circuit is set out on pages 701-713 on volume I Civil No. 828.

Item 58.

[Note]: Bill of Particulars filed January 28, 1948 in Civil No. 828 and by court's ruling of April 16, 1948 entered as well in Civil No. 836 is set out on pages 327 to 334 in volume I Civil No. 828. The entire transcript of proceedings in Criminal Nos. 2412 and 2413, Circuit Court, Second Judicial Circuit T. H. attached to the Bill of Particulars in Civil No. 828 is set out on pages 567 to 1082 in volume I Civil No. 828.

In the United States District Court
for the District of Hawaii

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S
& WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor
union; ANTONIO T. RANIA, individually and
as a member of the ILWU and as President of
the United Sugar Workers, ILWU Local 142,
JOSEPH KAHOLOKULA, et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
at Attorney General of the Territory of Ha-
waii; et al.,

Defendants.

ORDER

Before: Biggs, Circuit Judge, and Metzger and
Harris, District Judges.

And, now, to wit, this 19th day of April, 1948,
upon consideration of the briefs and arguments of
the respective parties by their counsel in the above
entitled cause on the motion for more definite state-
ment, for the dismissal of the action and for sum-
mary judgment, it is ordered:

(a) That that part of the motion to the effect
that the claims be made more definite and certain,

(b) That that part of the motion moving for
summary judgment in favor of the defendants, and

(c) That those portions of the motion moving for dismissal of the action, be and the same hereby are denied: and

It is Further Ordered that those portions of the motion going to the dismissal of the action as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise be and the same hereby are retained for further consideration and for ultimate disposition at an appropriate time:

For the Court:

/s/ JOHN BIGGS, JR.

/s/ DELBERT METZGER.

/s/ GEORGE B. HARRIS,

[Endorsed]: Filed April 19, 1948.

[Title of District Court and Cause.]

STIPULATION

It is Hereby Stipulated by and between the plaintiffs and defendants in the above-entitled action (other than the persons named individually and as grand jurors of the County of Maui, who have not been served), by their respective counsel, but for the purposes of this action only, that:

1. With respect to paragraph I of the complaint, it is stipulated that the International Longshoremen's and Warehousemen's Union, hereinafter referred to as ILWU, one of the plaintiffs above named, is a voluntary unincorporated association and labor union having a membership of approxi-

mately 30,000 persons in the Territory of Hawaii, said members generally being employed as wage earners in the sugar, pineapple and longshore industries. The plaintiff, Antonio T. Rania, at the time this action was filed and now is a member of the ILWU and the president of the United Sugar Workers, ILWU, Local 142.

2. The citizenship of the individual plaintiffs (other than Rania) is as set forth in paragraph II of the complaint, and their race is as set forth in the schedule in said paragraph II and the allegations which follow said schedule. No stipulation is made as to the custom or practice of the Hawaiian Islands or the United States Census Bureau in classifying persons as Caucasian or otherwise. All of said individual plaintiffs are residents of the Territory of Hawaii and members of said ILWU, and with the exception of the plaintiffs, Antonio Rania, Levi Kealoha, Benjamin Kahaawinu, Joseph Kaholokula, and Leocadio Baldovi, at all times here involved were and at the time the complaint was filed were wage earners employed by Maui Agricultural Company, Limited, a sugar company.

3. Paragraph III is stipulated to except as to the last paragraph thereof and in that connection it is stipulated that the persons therein named went out of office as grand jurors as of January 12, 1948.

4. With reference to paragraph VIII it is stipulated that on or about October 16, 1946 and for some time prior thereto a labor dispute existed in the Territory of Hawaii, and among other members of the ILWU on strike many employees of Maui Agri-

cultural Company, Limited were on strike, including those of the individual plaintiffs above named who have been stipulated to be employees of said Maui Agricultural Company, Limited.

5. With reference to paragraph IX, it is stipulated that on December 2, 1947 the grand jury of said circuit returned an indictment against the individual plaintiffs (other than Rania) which indictment was filed in the Circuit Court, Territory of Hawaii, on December 2, 1947 under Criminal No. 2365 among the records of the said court, a copy of said indictment being attached to the complaint as Exhibit E thereof. The grand jury returning said indictment was the 1947 grand jury, the membership of which was substantially as stated in the last paragraph of paragraph III of the complaint.

6. With reference to paragraph XI, it is stipulated that said individual plaintiffs, other than Rania, will be arraigned and required to plead to said indictment filed December 2, 1947, unless such arraignment is prevented by an order made and entered herein restraining and enjoining such further proceedings.

7. That the following exhibits are deemed admitted in evidence.

Item 1—Exhibit—Plaintiffs' E—Indictment filed December 2, 1947. Filing date—December 31, 1947, annexed to complaint.

Item 2—Exhibit—Defendants' L—Certificate as to the drawing of the 1948 grand jury. Filing date—January 17, 1948, filed in Civil No. 828 supplementing motion filed January 14, 1948.

Item 3—Exhibit—Defendants' N—Rules of Supreme Court of Hawaii relating to grand juries. Filing date—January 20, 1948, appended to motion.

8. It is Stipulated that subject to all legal objections on the part of the defendants the following exhibits in Civil 828 shall be deemed in evidence in this case:

Defendants' Exhibit C-1, Certificate of Disqualification of Judge Wirtz, filed in Civil No. 828 December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit C-2, Supplemental Certificate of Disqualification of Judge Wirtz, filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit D, Order and Authorization to Judge A. M. Cristy, filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit E, motions and challenges to the grand jury made by Barbosa and certain others not parties to this case (being plaintiffs in Civil No. 828), filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause.

9. It is Stipulated that the record of the proceedings before the Honorable A. M. Cristy, including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire

record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

10. It is Stipulated that the exhibits received by said Honorable A. M. Cristy, upon production in this court, shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

11. All parties reserve the right to introduce such further evidence and exhibits as may be material.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii.

/s/ WENDELL F. CROCKETT,
Deputy County Attorney,
County of Maui.
Attorneys for Defendants.

/s/ HARRIETT BOUSLOG,
/s/ MYER C. SYMONDS,
Attorneys for Plaintiffs.

[Endorsed]: Filed April 23, 1948.

[Title of District Court and Cause.]

ANSWER

Come now the defendants above named other than the persons named individually and as grand jurors

of the County of Maui, who have not been served, and for answer to the complaint herein:

I.

Deny all the material allegations thereof not stipulated by the stipulation between the parties dated April 22, 1948.

II.

Aver that the indictment against the individual plaintiffs other than Rania was made and returned upon evidence presented to the grand jury pertaining to incidents and occurrences at Paia, Island of Maui, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and upon evidence presented to the grand jury concerning the participation of the plaintiffs in the offenses then and thereby committed, to wit: that on the 16th day of October, 1946, the said plaintiffs with divers other persons the total numbering in excess of 500, having assembled together, and having organized and formed a picketing line on the public highway between the office and mill of Maui Agricultural Company, Limited, at said Paia, being so assembled together, when requested by Assistant Chief of Police Freitas to permit entry on said mill premises of Maui Agricultural Company, Limited, by Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrad P. Corden, employees of said company, the plaintiffs with other unnamed persons in a violent, tumultuous and threatening manner and uttering threats of violence, did form into a massed block

and did surge forward and did shove, push and assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrade P. Corden and the escorting police officers, and by such shoving, pushing and assaulting as aforesaid did intimidate, terrify and prevent such employees from proceeding across said public highway and from proceeding to their place of employment, and from engaging in their employment; that the said plaintiffs and other persons by participating in, promoting, aiding, and abetting such violent, tumultuous and threatening massing into a block and said shoving, pushing and assaulting and other actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General,
Territory of Hawaii.

/s/ WENDELL F. CROCKETT,

Deputy County Attorney,
County of Maui.

Attorneys for Defendants.

[Endorsed]: Filed April 23, 1948.

Item 63.

[Note]: Order consolidating for hearing and trial Civil Nos. 828 and 836, filed April 23, 1948, is the same. Set out on pages 348 to 349 in volume I Civil No. 828.

Item 64.

[Note]: Opinion of the court filed December 27, 1948, is the same as that in Civil No. 828. Set out on pages 370 to 520 in volume I Civil No. 828.

Item 65.

[Note]: Order amending opinion of December 27, 1948, filed January 18, 1949, is the same as that in Civil No. 828. Set out on pages 521 to 522 in volume I Civil No. 828.

Item 66.

[Note]: Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and for the dismissal of the action as to them and affidavit, filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, January 20, 1949, in Civil No. 836 as well as Civil No. 828, was in the same form as that filed for Civil No. 828. Set out on pages 523 to 525 in volume I of Civil No. 828.

Item 67.

[Note]: Order (rule to show cause) of February 23, 1949, issued in Civil No. 836 as well as Civil No. 828, was in the same form as that issued in Civil No. 828, except that Jean Lane, Chief of Police of the County of Maui, was not ordered to show cause. Set out on pages 525 to 529 in volume I Civil No. 828.

Item 68.

[Note]: Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949, in Civil No. 836 as well as Civil No. 828 is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane and changes in wording so as to make proper references to the respective causes. Set out on pages 530 to 537 in volume I Civil No. 828.

Item 70.

[Note]: Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in propria persona March 11, 1949 in Civil No. 836 as well as Civil No. 828 is in the same form as that filed for Civil No. 828. Set out on pages 538 to 539 in volume I Civil No. 828.

Item 71.

[Note]: Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in propria persona March 12, 1949 in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828. Set out on pages 539 to 541 in volume I Civil No. 828.

Item 73.

[Note]: Order discharging rule to show cause, filed March 24, 1949, made in Civil No. 836 as well as Civil No. 828, is in the same form as that made in Civil No. 828. Set out on pages 541 to 542 in volume I Civil No. 828.

In the United States District Court
For the District of Hawaii
Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

DECREE

This cause having come on to be heard before the Honorable John Biggs, Jr., a circuit judge of

the Third Judicial Circuit of the United States, designated and assigned by the Honorable Fred M. Vinson, The Chief Justice of the United States, to act as a circuit judge in the Ninth Judicial Circuit of the United States and to discharge all the official duties of a circuit judge thereof as appears from the order of designation and assignment, and also designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge of the Ninth Judicial Circuit of the United States, to hold the District Court of the United States for the District of Hawaii as appears from that order of designation and assignment, and before the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge for the Ninth Judicial Circuit of the United States as aforesaid, to hold the District Court of the United States for the District of Hawaii, and before the Honorable Delbert E. Metzger, Senior District (now Chief) Judge of the District Court of the United States for the District of Hawaii, the Honorable Delbert E. Metzger having called to his assistance to hear and to determine the above entitled cause, pursuant to Section 266 of the Judicial Code of 1911, the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States designated and assigned as aforesaid to act as a circuit judge of the Ninth Judicial Circuit of the United States

and to discharge all the official duties of a judge of that circuit, and the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, and the Court having reserved for further consideration the applicability of the provisions of Section 266 of the Judicial Code of 1911, stating that all three judges would sit to hear and determine the above entitled cause, and

The Court having proceeded to hearing of the motions filed by defendants on January 20, 1948 and of the application for preliminary injunction, and

The Court on April 19, 1948 having denied defendants' motions save that those portions of the motions going to the dismissal of the actions as to particular defendants were reserved for further consideration, and

As to the application for preliminary injunction, the Court having ruled that it would consider the matters presented by defendants' motions as constituting their return to the order to show cause why such preliminary injunction should not issue, and said application for preliminary injunction having been consolidated for further hearing with the application for a permanent injunction, by agreement of the parties, and this cause having been consolidated for trial with Civil No. 828, and both causes having been set for trial on April 23, 1948, and having come on for trial on that date, and

The defendants at the outset of the trial hav-

ing taken and having thereafter preserved objections to the entire testimony and exhibits relating to the grand jury, and the Court having reserved for further consideration the question whether such testimony and exhibits should be struck, and

The parties having made various other motions to strike testimony or documentary evidence which were reserved for later disposition, and

The defendants at the end of plaintiffs' direct case having moved to dismiss the action on all of the grounds stated in their previous written motion and on the ground that the proof had not substantially altered the case, and the Court having reserved this matter for later disposition, and

The cause having been fully heard on the merits, and the Court having made and filed herein its opinion, containing all necessary findings of fact and conclusions of law as contemplated by Rule 52(a) of the Federal Rules of Civil Procedure, and

The opinion of the Court having been filed on December 27, 1948 and it appearing from the motion and affidavit of Walter D. Ackerman, Jr., Attorney General of Hawaii, that the defendants E. R. Bevins and Wendell F. Crockett, respectively County Attorney and Deputy County Attorney of Maui County, ceased to hold their respective offices on or about January 3, 1949 and that Harold L. Duponte was elected County Attorney for the County of Maui and took office on or about January 3, 1949 and that Thomas Ogata is now Deputy

County Attorney of Maui County, and the allegations of the motion and affidavit not having been denied by the plaintiffs and being conceded by all parties to be true, and the said Walter D. Ackerman, Jr., Attorney General of Hawaii having moved to dismiss the action as to the defendants Bevins and Crockett as moot, now therefore,

It Is Hereby Ordered, Adjudged and Decreed That:

1. This decree is rendered by the judges above named as a specially constituted three-judge court under sections 2281 and 2284 of revised Title 28, United States Code, or in the alternative, if these provisions be inapplicable in the United States District Court for the District of Hawaii, then as the United States District Court for the District of Hawaii comprised of three judges sitting en banc.

2. This decree is binding on the defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and his agents and deputies and successors in office, and upon the defendants E. R. Bevins and Wendell F. Crockett individually.

3. The action is dismissed as to the defendants E. R. Bevins and Wendell F. Crockett in their respective capacities as County Attorney for the County of Maui and Deputy County Attorney for the County of Maui, they having ceased to hold office on or about January 3, 1949.

4. The action is dismissed as to the defendants Ingram H. Stainback, individually and as Governor

of the Territory of Hawaii, Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allen H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom, and Joseph H. Trask, individually and as Grand Jurors of the County of Maui.

5. This decree shall inure to the benefit of the plaintiff International Longshoremen's and Warehousemen's Union, a voluntary, unincorporated association and labor union, and to the plaintiff Antonio T. Rania, as a member of the International Longshoremen's and Warehousemen's Union and as president of the United Sugar Workers, International Longshoremen's and Warehousemen's Union Local 142, and in a representative capacity for and on behalf of said International Longshoremen's and Warehousemen's Union and Local 142 and the members thereof.

6. The defendants' objections to the testimony and exhibits relating to the grand jury are overruled and the motion to strike the same denied, and all other motions of any of the parties to strike testimony or documentary evidence are denied.

7. The defendants' motion to dismiss the action at the end of the plaintiffs' direct case is denied.

8. All of the defendants' motions made January 20, 1948 and denied April 19, 1948, having been reconsidered, are denied.

9. The unlawful assembly and riot law of the Territory of Hawaii, as contained in chapter 277 of the Revised Laws of Hawaii 1945, is void as unconstitutional.

10. The conspiracy law of the Territory of Hawaii, as contained in chapter 243 of the Revised Laws of Hawaii 1945, is void as unconstitutional.

11. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced in October, 1946, against the plaintiffs Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shitano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Clason, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos

Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Tani-guchi, Takeji Tomita, Kiyoshi Toska, Antone S. Vierra, and Masaru Yoneda, under any complaint or indictment based on the unlawful assembly and riot statute or the conspiracy statute.

12. The indictment, at Criminal No. 2365, returned by the Grand Jury of the County of Maui on December 2, 1947 against the individual plaintiffs named in paragraph 11 is void and is and shall be held for nought, the said Grand Jury having been illegally constituted in violation of the provisions of the Constitution of the United States, of the laws of the United States and of the laws of the Territory of Hawaii.

13. The plaintiffs shall recover against the defendants their costs herein expended, but shall take nothing by way of damages.

/s/ JOHN BIGGS, JR.,

Circuit Judge.

/s/ DELBERT E. METZGER,

Chief Judge.

/s/ GEORGE B. HARRIS,

District Judge.

Dated: March 29th, 1949.

[Entered]: Mar. 29, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 26th day of April, 1949.

WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii,

By /s/ RHODA V. LEWIS,
Attorney General, Attorney
for Walter D. Ackerman, Jr.

[Endorsed]: Filed April 26, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. R. Bevins and Wendell F. Crockett, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 22nd day of April, 1949.

/s/ E. R. BEVINS,
In Propria Persona.

/s/ WENDELL F. CROCKETT,
In Propria Persona.

[Endorsed]: Filed April 26, 1949.

Item 78.

[Note]: Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, as principal, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surely, filed April 28, 1949 in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane. Set out on pages 552 to 557 in volume I Civil No. 828.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD WITH THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, and good cause appearing therefor:

It Is Hereby Ordered that the time of all of the appellants for filing the record on appeal and docketing the appeal with the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including July 25, 1949.

Dated at Honolulu, T. H., this 26th day of May, 1949.

/s/ D. E. METZGER,
U. S. District Judge.

Approved:

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Endorsed]: Filed May 29, 1949.

Item 80.

[Note]: Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter, filed June 23, 1949, and such order as the court may make relative thereto, is the same as that printed for Civil No. 828. Set out on pages 558 to 564 in volume I Civil No. 828.

Item 81.

[Note]: Stipulation and order for the consolidation of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949, is the same as that printed for Civil No. 828. Set out on pages 564 to 565 in volume I Civil No. 828.

Item 83.

[Note]: Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins, filed in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828. Set out on page 566 in volume I Civil No. 828.

Item 84.

[Note]: Designations of record on appeal are the same as those printed for Civil No. 828. Set out on pages 1949 to 1973 in volume IV Civil Nos. 828 and 836.

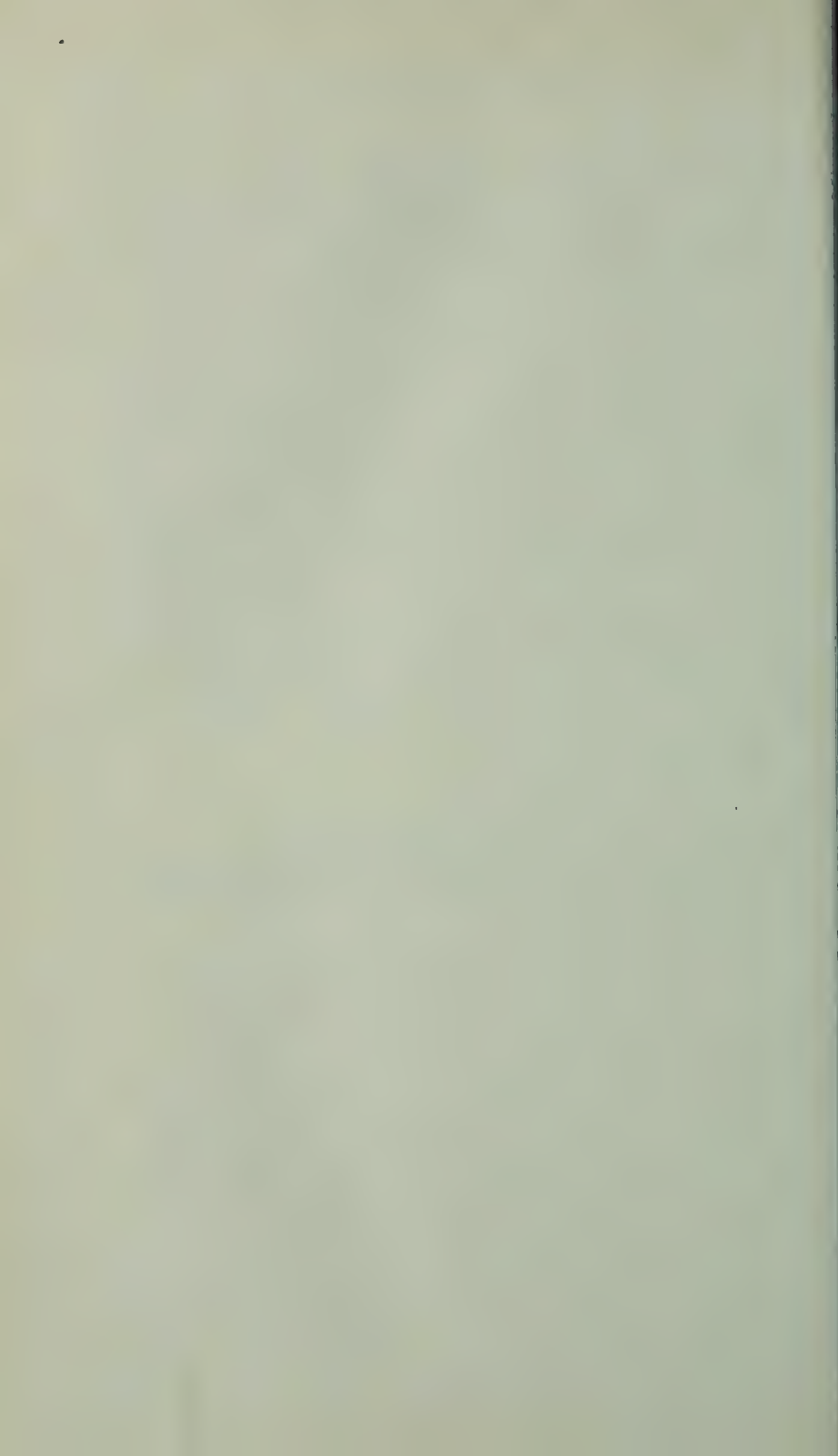
Item 84-A.

[Note]: Statements of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit are the same as those printed for Civil No. 828. Set out on pages 1974 to 1992 in volume IV Civil Nos. 828 and 836.

[Endorsed]: No. 12301. United States Court of Appeals for the Ninth Circuit. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, Appellant, vs. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al., Appellees. E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individuall and as Deputy to the County Attorney for the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii.

Filed July 23, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.



United States
Court of Appeals
For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii, and JEAN LANE, individually and as
Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of
Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

vs.

E. R. BEVINS, individually and as County Attorney for the County
Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

Transcript of Record

In Four Volumes

Volume II Pages 567 to 1066

Appeals from the United States District Court for the
Territory of Hawaii

No. 12300 – No. 12301

United States
Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii, and **JEAN LANE**, individually and as
Chief of Police of the County of Maui,

Appellants,

vs.

**INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION**, a voluntary unincorporated association and labor union,
et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of
Maui, and **WENDELL F. CROCKETT**, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

**INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION**, a voluntary unincorporated association and labor union,
et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii,

Appellant,

vs.

**INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION**, a voluntary unincorporated association and labor union,
et al.,

Appellees.

vs.

E. R. BEVINS, individually and as County Attorney for the County
Maui, and **WENDELL F. CROCKETT**, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

**INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION**, a voluntary unincorporated association and labor union,
et al.,

Appellees.

Transcript of Record

In Four Volumes

Volume II Pages 567 to 1066

Appeals from the United States District Court for the
Territory of Hawaii

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

Criminal No. 2412

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE, and
ANTONIO MENDES,

Defendants.

Criminal No. 2413

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO, JAMES
KIA AIKALA, SHIGERU YAGI, BASILISO
ARRUIZA, MIDORI ODA, SHIGEYUKI
MATSUURA,

Defendants.

January, A. D. 1947 Term

(Monday, September 15th, 1947, 9:15 a.m.)

TRANSCRIPT

The Court: Call the cases, Mr. Clerk.

Deputy Clerk: Criminal No. 2412, Territory of
Hawaii vs. Abraham Makekau, et al.

The Court: There is another one also.

Deputy Clerk: Criminal No. 2413, Territory of Hawaii vs. Diego Barbosa, et al.

The Court: Are counsel ready? [1*]

Mr. Resner: Ready.

Mr. Crockett: Ready for the prosecution, if the Court please.

Mrs. Bouslog: May it please the Court, I think the defendants are still outside the court room.

The Court: It is up to counsel to bring them in. It isn't up to the Court.

(Defendants called into court room by Mrs. Bouslog.)

Mrs. Bouslog: Your Honor all the defendants are present in these two cases except one of the defendants—Baldua, who is in the hospital.

The Court: So to explain the discrepancy that will appear in the minutes as to the opening of court, it should appear that the Court has been waiting on counsel and not counsel on the Court.

I understand that there has been filed in the case an amended challenge for cause of the Grand Jury panel as a whole and an amended challenge to the individual grand jurors. Does the prosecution resist the challenge or concede.

Mr. Crockett: The prosecution resists the challenge, if the Court please, and will proceed on the hearing.

The Court: You may proceed. Is counsel for

* Page numbering appearing at foot of page of original Reporter's Transcript.

the defendants presenting the challenge presenting any testimony? [2]

Mr. Resner: Yes, if the Court please. The mere statement of counsel for the prosecution that they resist the challenge is not sufficient, as I see it, to disallow the amendment. It is an amendment purely as to form and is directed to the discretion of the Court.

The Court: I think counsel misunderstood. The Court's question was directed as to whether they admitted the challenge and wanted the grand jury dissolved or whether or not they resisted the challenge and wanted to proceed to set forth and establish your challenge as set forth in your amended challenge.

Mr. Resner: I see, because we proceed on the amended challenge, and I direct the Court's attention to the fact that the amendment was filed simply to include the proposition that we challenge not only the grand jury as a whole, the fifty members thereof, but the array of persons who are intended to take possible action against these defendants; namely, the array of twenty-one grand jurors. We object to both the panel as a whole and the array as such in this case.

The Court: I understand you are proceeding on the amended challenge, and if you have any testimony to offer the Court, please proceed.

Mr. Resner: Yes, very well. I might state by way of preface what it is we expect to show to the Court.

The Court: Make it brief, please. [3]

Mr. Resner: The theory upon which we proceed is that the instant grand jury as a whole and the array in this particular case is not a representative grand jury, not a democratic grand jury, not a cross section of the community, and, therefore, not an impartial and fair grand jury to which any persons, and particularly these defendants, in a criminal case are entitled under the Constitution and laws of the United States of America and of the Territory of Hawaii and the Organic Act of the Territory. We contend that there has been an arbitrary and deliberate exclusion of members of the so-called working class group and a deliberate inclusion of members of the so-called employer or owner group so that it is not representative of the population over which this court exercises jurisdiction.

Secondly, we contend that there has been an arbitrary and unfair discrimination with regard to the racial composition of the grand jury in that persons of non-caucasian origin have been arbitrarily and systematically excluded and those of caucasian origin have been systematically and arbitrarily included, so that the population make-up of the grand jury on a racial basis is not representative of the area over which this court exercises jurisdiction.

Next, we contend that since admittedly there are no women upon the grand jury or the array that that constitutes a violation of the Organic Act, the statutes [4] of the Territory, of the Nineteenth Amendment to the Constitution of the United States,

and the Fifth, Sixth and Fourteenth Amendments; and the arbitrary exclusion of women from the grand jury is unconstitutional and vitiates it as a whole.

Those in the main are the three particularly important points that we stress.

We also will demonstrate to the Court that a Territorial requirement that a grand juror understandably, as the statute employs the term, must speak, write and use the English language is such that it vests in the jury commissioners and in the Court arbitrary power to set up their own standards of education for membership on the grand jury, as a result of which the grand jury is not representative of the educational groups in the community—even though those educational groups having less formal education than some will be proper grand jurors—and that the statute permits the Court and the commissioners to discriminate, and they have discriminated in that regard.

Now, if the Court please, we will call as our first witness, Mr. John Reinecke.

JOHN E. REINECKE

having been first duly sworn, was examined and testified as follows: [5]

Direct Examination

By Mr. Resner:

Deputy Clerk: Please state your name.

Witness: John E. Reinecke.

Mr. Resner: If your Honor please, before we

(Testimony of John E. Reinecke.)

proceed to question Mr. Reinecke, I assume that the Court will take judicial notice of the names and addresses and other data concerning the grand jurors on the instant panel and instant array.

The Court: The matter is before the Court as far as this record shows and any such reference to the same may be made by either counsel.

Mr. Resner: Very well. I think that we shall have a list of those jurors and their addresses in evidence.

The Court: That is up to counsel.

Mr. Resner: Very well, but I assume that the Court had such a record available, and if not, we will produce it.

Now, Mr. Reinecke, will you state your full name, please?

Witness: John E. Reinecke.

Q. Your address, sir?

A. 1555 Piikoi Street, Honolulu.

Q. And what is your profession?

A. A school teacher.

Q. At what place?

A. At Farrington High School, Honolulu. [6]

Q. How long have you enjoyed that position, Mr. Reinecke?

A. I have been in the present position three years—beginning my fourth year.

Q. What subjects do you teach there?

A. I teach English and Social Studies.

Q. And what do your courses in Social Studies include?

(Testimony of John E. Reinecke.)

A. Generally, it is usually called Civics; that is, Government with a smattering of Economics and Sociology.

Q. What is your educational background?

A. I have Bachelor's degree; an M. A., 1935, from the University of Hawaii; Ph.D., 1937, Yale.

Q. In what did you take your Doctor's degree?

A. In the field of race relations.

Q. And when did you obtain your Ph.D.?

A. 1937.

Q. Have you been teaching since then?

A. I have.

Q. What was your first teaching position?

A. One year at the University of Hawaii.

Q. What did you teach there?

A. Sociology and Anthropology.

Q. What was your next teaching position?

A. In the public school system of Hawaii.

Q. And what course did you teach there?

A. English and Social Studies. [7]

Q. Now, do you have some particular field of work in which you have specialized so far as your study and work are concerned?

A. Yes, I have two. One of them is the one in which I have done a great deal of academic work. That is sociology of languages. The other is one in which I have been interested for the past eight or nine years—the development of labor relations in Hawaii, and, incidentally, the effect of labor relations upon race relations.

(Testimony of John E. Reinecke.)

Q. Now, just——

A. May I add that I have in the past two years and a half studied to some extent the industrial structure of Hawaii.

Q. Now, what material have you gone to in connection with your study of labor relations and industrial activity and composition of the Territory of Hawaii.

A. You mean written sources?

Q. Written sources.

A. Largely to government reports, to finance reports, and a great deal of the material one has to pick up here and there from newspapers in Hawaii. Also a certain amount is—particularly on the labor side—is gained by personal contacts.

Q. Mr. Reinecke, with regard to the County of Maui and the Islands of Maui, Lanai and Molokai, which make up the county, could you tell us some of the [8] results of your studies and investigations on the occupational make-up of the county?

A. I have—I don't have the figures in hand here of the occupational distribution for Maui County. I believe that Mr. Harry Oshima, who is present here, has that. However, I prepared some material on the firms which dominate the economy of this county.

Q. Well, let's go into that proposition from the question of business ownership in Maui County, and would you tell us please what your study reveals in that regard.

(Testimony of John E. Reinecke.)

A. Yes. Maui County is essentially an agricultural county. The industry here is incidental to the production of pineapple and sugar cane. And in this county, which is made up of three islands of any importance, there are ten plantation units; also some four or five subsidiary firms, subsidiary to these plantations.

Q. Would you give us those firms?

A. Yes. And there are about four or five large ranches. These firms are as follows:

Q. In giving us the names of the firms, could you also indicate what particular kind of business or activity they carry on?

A. Yes, I can do that.

Q. All right. Proceed then. [9]

A. I will list first the plantation units. On the Island of Lanai, there is the Hawaiian Pineapple Company Plantation. On the Island of Molokai, there are two pineapple plantations, one conducted by California Packing Corporation and the other by Libby, McNeill and Libby; and one large ranch, Molokai Ranch, Limited. On this island, there——

Q. When you refer to “this island” you mean Maui?

A. On this island, Maui, there is Hawaiian Commercial and Sugar Company, Limited; Maui Agricultural Company, Limited; Pioneer Mill Company, Limited—which incidentally has a wholly owned subsidiary called Lahaina Ice Company, Limited;

(Testimony of John E. Reinecke.)

and finally, Wailuku Sugar Company. Those are the four sugar companies.

Q. Now, the four you have mentioned just previously, starting with Maui, are the four sugar producing companies? Now——

A. That is true—H. C. & S., M. A., Pioneer Mill, and Wailuku Sugar.

Q. I don't think you mentioned it, but Hawaiian Pineapple Company of Lanai and CALPAC and Libby, McNeill & Libby and Molokai Ranch are all pineapple producing companies?

A. Molokai Ranch is a cattle ranch.

Q. Molokai Ranch is a cattle ranch?

A. Yes. The other three are pineapple producers. I [10] think that the Hawaiian Pineapple Company also has a ranch, incidentally. It is common practice for the plantations to conduct ranches on some of their land.

Then, further, on this Island there are three pineapple units—Baldwin Packers, Limited—plantation and cannery; a branch of Libby, McNeill & Libby; and Maui Pineapple Company, Limited.

Q. Those three are what, Mr. Reinecke?

A. Those are pineapple producers.

Q. These are canneries, are they, here?

A. Canneries and plantations. There are several large ranches, outstanding among which are Haleakala Ranch, Limited; Ulupalakua Ranch, Limited; and Hana Ranch, Limited. Hana Ranch was formerly the Kaeleku Sugar Company. The growing of

(Testimony of John E. Reinecke.)

sugar has been discontinued. The place now is run as a ranch hotel.

Now, there are several subsidiary companies. American Can Company has a small factory on this Island servicing the three pineapple canneries. There is an East Maui Irrigation Company owned by H. C. & S. and M. A. Company. There is Kahului Railroad Company, almost wholly owned by H. C. & S.; and Maui Electric Company which is dependent upon H. C. & S. for its power. And I should perhaps explain what the connections of each of these firms are. [11]

Q. The connections between themselves?

A. Yes, and also the control that is exercised over them.

Q. All right, will you give us that information next, Mr. Reinecke?

A. Yes. Three of the firms represented are mainland corporations—American Can Company, California Packing Corporation, and Libby, McNeill & Libby. All the rest are mostly connected with one or another of the “big five” factors. For example, the Hawaiian Pineapple Company is connected with Castle & Cooke, Limited, which owns 18% of the stock and acts as its agent. Pioneer Mill Company is connected with American Factors, Limited, which owns 26% of its stock. The Wailuku Sugar Company is represented by C. Brewer Company, Limited. The remainder of the firms are closely tied in with Alexander & Baldwin, Limited.

(Testimony of John E. Reinecke.)

This firm, Alexander & Baldwin, Limited, acts as agent for all of them except Haleakala Ranch Company and Maui Electric Company.

Q. It acts for which, Mr. Reinecke?

A. It acts as agent for all except Haleakala Ranch and Maui Electric Company.

Q. Acts for all which?

A. All these remaining firms with the exception of Hana Ranch.

Q. And the ones that you have named there have connections with either Castle & Cooke and American Factors [12] or C. Brewer?

A. That's right. Kaeleku Sugar Company used to be represented by C. Brewer & Company, Limited. I don't know whether Hana Ranch is still represented by them or not.

But, now, returning to the Alexander & Baldwin set-up—Alexander & Baldwin owns some 33% of the stock in Hawaiian, Commercial & Sugar Company, and it in turn holds most of the stock, over 90%, in the Kahului Railroad. Alexander & Baldwin hold 24% of the stock in Maun Agricultural Company, and M. A. Company and H. C. & S. together own East Maui Irrigation Company. Furthermore, Maui Agricultural Company owns a great deal of the stock of Maui Pineapple Company, Limited. The latest figures I have are 14,733 shares.

Q. What is the source of those figures, Mr. Reinecke?

(Testimony of John E. Reinecke.)

A. From various sources. Partly from the Hawaiian Manual of Securities; partly from a Hawaiian investment manual—just a moment, I will have the title of that—here it is—“An Investor’s Guide to Hawaii”, Blythe & Company, Incorporated; the figures which they gave were as of the close of 1944. Baldwin Packers also is represented by Alexander & Baldwin. I don’t know the per cent of the stock held. It comes to something like 18,750 shares. Ulupalakua is represented [13] by Alexander & Baldwin. It is owned by the Baldwin family. Haleakala Ranch I don’t believe is represented by Alexander & Baldwin, but it is owned by members of the Baldwin family. Maui Electric Company—I understand that a large block of stock in it was recently purchased by Alexander & Baldwin. Furthermore, the manager of Kahului Railroad Company is president of Maui Electric Company.

Q. Who is that?

A. Mr. William Walsh. Finally, as a subsidiary one might include Maui Publishing Company, Limited, which issues the Maui News. Stock is held in this company by, among others, H. C. & S. and Pioneer Mill—two of the large plantations.

Q. Let me interrupt here, Mr. Reinecke, to ask you to explain, so that a person not familiar with the economy of Hawaii might read the record here and get an understanding of the situation, just what the Factors are and what their position is, their relationship to the economy of the Territory—those

(Testimony of John E. Reinecke.)

Factors whom you have named in connection with ownership of the various industrial concerns and agricultural concerns on Maui.

A. The Factors, the——

Mr. Crockett: To which we object. I submit that what the relation to the Factors might be to the corporation—I submit has no bearing to any issue in [14] this matter. I haven't made objections to the evidence which has been heretofore introduced—in fact, I supposed on occasion that counsel would connect it up to show how it had a bearing upon any issue of this particular case. Now he is going back to show what may be the relation of the Factors to these corporations that have been set forth as being here on the Island of Maui. We submit it has no bearing whatsoever upon any issue in this particular case. The question we are trying is the qualification of certain grand jurors, the arbitrary selection by the Jury Commissioners. What has the relationship between the Factors to do with the discretion which the statute has vested in these Jury Commissioners?

Mr. Resner: Well, I don't think that calls for much argument, if the Court please. We are proceeding on the theory announced by the United States Supreme Court which is found in *Thiel vs. Southern Pacific Company*, which is cited in our Memorandum of Authorities. And I think we will show fairly conclusively that the Factors dominate the industry of Hawaii; they dominate the industry

(Testimony of John E. Reinecke.)

of Maui; and the composition of the grand jury of Maui is made up of persons who are associated with or beholden to the Factors.

The Court: Mr. Resner, there is a much more preliminary problem which the Court has been waiting to find [15] out, but by virtue of their being no objection, the Court has not interfered with your examination. Are you intending to show that the Jury Commissioners are beholden to the Factors and consulted the Factors in relation to the selecting of these grand jurors?

Mr. Resner: What we hope to show, if your Honor please—we will show that in so far as the Jury Commissioners are concerned, there has been a deliberate selection of persons who are associated with the Factors as members of the grand jury.

The Court: That is evading the question of the Court, Mr. Resner, and you are quite aware of the fact. Are you intending to show that the Jury Commissioners picking out these jurors deliberately are beholden to the Factors or selected them from the standpoint that these men would be beholden and controlled by the Factors?

Mr. Resner: I don't quite understand the Court's question. We don't have to show any such thing. All we have to show is that there is a deliberate selection of persons.

The Court: The objection is sustained. The Court is not interested in the abstract proposition of the Factors' inter-relationship in the economy

(Testimony of John E. Reinecke.)

until you show preliminarily an action by the Jury Commissioners which is reprehensible, and then the Court may permit such a stating as to indicate to what extent the bias [16] may play.

Mr. Resner: Your Honor——

The Court: The Court has ruled. You may take an exception and proceed.

Mr. Resner: I only want——

The Court: I have no cause for any argument after once ruling.

Mr. Resner: I will——

The Court: Now, sit down, please, and go on with your examination.

Mr. Resner: I should like to take up a new point, Judge.

The Court: The Court has ruled. You may have an exception. Your exception will protect you. Do we understand one another?

Mr. Resner: I am not quite sure that I do, your Honor.

The Court: Well, proceed on your misunderstanding. I am sorry my English isn't plain enough.

Mr. Resner: The English is plain. I question the idea.

The Court: A little more of that comment, Mr. Resner, and you and I will have to have a show down. You understand this is a court room and I have ruled.

Mr. Resner: I am trying to, Judge.

Mr. Reinecke, with regard to the economy of the

(Testimony of John E. Reinecke.)

[17] County of Maui, with regard to the firms which you have listed here in industry and agriculture, what percentage of the business activity of Maui are these firms engaged in and exercise ownership and control over?

Witness: By far the largest part. As nearly as I can estimate, there are something like 11,000 persons employed by these firms which I have named. I know that union members paid up—dues paid members, according to the latest figures, come to almost exactly 7,000 for these firms.

Q. That is, union members employed by these firms number 7,000?

A. 7,000. Naturally, there are several thousand employees who are not union members.

Q. Is there any way of including percentage ownership of the economy of Maui on the part of these firms which names you have given us, whose stock ownership you have pointed out to us?

A. I do not have the figures, but it is obvious that they own by far the greater part of the assets in this county. I might further call your attention to the dominant place of the Alexander & Baldwin firm, two of the sugar companies, two of the pineapple companies, two of the ranches, Kahului Railroad Company, and two of the smaller subsidiaries being controlled by Alexander & [18] Baldwin. Furthermore, the Baldwin family is largely in control of Alexander & Baldwin and its firms. Some thirteen years ago, I believe the Baldwin family was

(Testimony of John E. Reinecke.)

estimated to control something like \$15,000,000.00 out of \$24,000,000.00 of the sugar assets of this Island.

Q. Are the two industries of the County of Maui primarily sugar and pineapple?

A. They are.

Q. To what extent?

A. Ranching is a poor third.

Q. What percentage of the business activity, industrial activity of Maui would you say pineapples and sugar occupy.

A. I can't say offhand.

Q. Can you approximate it on the basis of any—

A. From the basis of the employment opportunities, I would say about 70%, but I don't know as to assets. That is purely offhand, Mr. Resner.

Q. With regard to commercial firms, Mr. Reinecke, and by that I mean retail operations and things of that character, what is their connection with the firms who are engaged in the main business of Maui?

A. Well, a number of the retail establishments are owned outright by the agricultural firms, and the remainder have to buy most of their supplies either from local firms like—such as H. C. & S. or from one or other of the “big five” [19] or from Lewers & Cooke, which is connected with the “big five.” Furthermore, there is a rather widespread condition here in Hawaii in that small business men

(Testimony of John E. Reinecke.)

are stock holders in subsidiary firms of the "big five" or vice versa—that minor executives in the big firms go into small businesses on the side. I can point out one instance which has some bearing on this jury list.

Q. Would you do that please?

A. As I remember, a Mr. Elmore who is on the grand jury list is head of a firm called Valley Isle Motors. He is also on the Board of Directors of Maui Electric Company which, in turn, as I indicated before, is largely controlled by Alexander & Baldwin and, indirectly, through its sale of power by H. C. & S.

Q. One moment, Mr. Reinecke. I want to turn, Mr. Reinecke, to the question of the composition on a racial basis of people in different occupational activities on Maui. With respect to the groups exercising ownership and control, management, what is the racial origin of that group?

A. It is almost entirely caucasian, and within the caucasian race that group which is usually called "haole."

Q. What is meant by that term?

A. Strictly speaking, a haole is a caucasian—not of Portuguese, Spanish or Puerto Rican descent, but because of the predominant economic and social position of this [20] group, popularly it has come to mean a white person who occupies a relatively good position in the community. However, from my observations, a Portuguese who rises to an eminent

(Testimony of John E. Reinecke.)

position in the community is still, as a rule, regarded as a Portuguese.

Q. Now, with regard to the groups which are engaged in the employee or worker class, with regard to the main industrial and agricultural firms which you have mentioned, what is the racial origin and background of that particular group of people?

A. The bulk of them are of Filipino or Japanese descent, or in some cases, birth. There is also a considerable number of people of Portuguese descent, a number of Puerto Rican descent, some of more or less unmixed Hawaiian descent, and a considerable number of mixed Hawaiian descent, part Hawaiians. Some of these part Hawaiians are largely caucasian in blood and associate socially with the caucasians.

Q. With regard to the Chinese, are there any of that racial group employed on Maui?

A. Very few.

Q. Very few. Have you mentioned all the racial groups now with regard to those who make up the worker or employee class?

A. All those of importance on this Island.

Q. What would the percentage be of persons of that [21] racial origin among the working class or group?

A. Which one do you refer to?

Q. The non-caucasian groups that are employed as workers on plantations and mills.

A. I cannot answer that off hand, Mr. Resner.

(Testimony of John E. Reinecke.)

Frankly, there was a division of labor in collecting material on this between Mr. Oshima and myself.

Q. I understand that some of these things he is going to testify to, but there is a certain amount of overlapping.

A. I would rather that he would give the exact proportions.

Q. Mr. Reinecke, have you had occasion to chart the interlocking character of the ownership of the various industrial and agricultural firms in this particular county? That is, Maui?

A. I have not charted it. I have prepared some figures on it.

Q. Is there a chart that has been prepared to which you refer which you have used which shows the connection?

A. Among the local firms?

Q. Yes, among the local and other firms.

A. Well, I have here a list of the officers and directors of all or most of the firms to which I have referred.

Q. Could you give those to us?

A. I hope I won't be called upon to read this whole list. [22]

Q. Let me see the list. Perhaps we can save some time. May I take the list your Honor?

The Court: You are at liberty to do so.

(Witness handing counsel paper.)

Witness: In general, the list shows only what I have already pointed out—in that the Factors own large blocks of stock in agricultural companies that,

(Testimony of John E. Reinecke.)

in turn, own the subsidiary companies, and naturally this leads to a duplication of names on the lists of the boards of directors.

Q. Have you another copy of this with you?

A. This is the only copy.

Mr. Resner: If your Honor please, I would like to offer the list in evidence and to that extent avoid the reading of it. I will have copies made for counsel.

The Court: Have you shown it to opposite counsel?

Mr. Resner: I wanted to have the Clerk mark it first.

The Court: Better have counsel look at it first.

Mr. Resner: Very well. Every court has a different manner of proceeding. Some give it to the Court first.

The Court: We are accustomed down here to the courtesy to attorneys.

(Counsel showing paper to counsel for the prosecution.) [23]

Mr. Crockett: We object to the list as submitted as having no bearing to this particular case. It contains names of persons many of whom are not residents of Maui, I am sure, and one or two persons here who are dead. We submit, if the Court please, it has no bearing whatever upon any issue of this particular case.

Mr. Resner: It runs to the question, if your Honor please, of the economic character, the indus-

(Testimony of John E. Reinecke.)

trial character of Maui, which is one of the points which is pertinent according to the testimony in the field that—if your Honor cares, I will show your Honor the list.

Mr. Crockett: May I add further, if the Court please, I submit that the fact that there might be interlocking directorates or officers or persons serving in two or three corporations has no bearing whatever upon the issues of this particular case. If all the corporations were controlled or under the direction of one particular man, we submit has no bearing upon the issues of this case. The main question is to what extent the commissioners, in selecting men, have been influenced by any of the persons who may be members or officers of these particular corporations.

The Court: The Court can see no materiality at the present time. You may mark it for identification, and if it becomes pertinent later the question can be renewed. [24]

Mr. Resner: We would like the privilege of withdrawing it to make copies.

The Court: Mark it the Movants' Exhibit "A".

Mr. Resner: Mr. Reinecke, do you have a chart which shows the interlocking directorate of the firms that you have given us—the names on Maui with regard to other firms in the Territory?

A. I have a large chart. Unfortunately, I left that in my hotel room. It can be obtained.

(Testimony of John E. Reinecke.)

Q. Well, we will come back to that later, then. If your Honor please, may we have a brief recess.

The Court: We will take a five minute recess.

(The Circuit Court recessed at 10:04 a.m. and reconvened at 10:10 a.m.)

Mr. Resner: Mr. Reinecke, you have had occasion, have you, to go over the grand jury list in this case of the fifty people named on it?

A. I have.

Q. Now, with regard to the occupational characteristics and employment relationships of those fifty persons with the firms who dominate the economy of Maui, what is the result of your studies in that respect?

Mr. Crockett: If the Court please, I don't believe the list has been offered in evidence—or the list of jurors. So if counsel will first put that in, we will proceed. [25]

Mr. Resner: I assumed that the Court would take judicial notice of its own records.

The Court: The Court as such, but this Judge substituting needs a little information, Mr. Resner, in a practical way. Theoretically, they are before the Court; practically, they are not.

Mr. Crockett: Counsel has shown me a list, if the Court please, to which we object. It is not a certified list of the court record. I think the Clerk has already prepared a certified list.

The Court: Have you one there that you can show counsel?

(Testimony of John E. Reinecke.)

Mr. Crockett: Yes, sir.

(Counsel for the prosecution showing counsel for the Movants paper.)

Mr. Resner: Practically the same as our list, if your Honor please. Is there any particular virtue——?

The Court: If there is a certified copy and it is stipulated to by you.

Mr. Resner: The only point is that it has trial jurors, and we are not concerned with trial jurors in this——

The Court: I think we are, Mr. Resner, in view of the fact that the Jury Commissioners are required to pick out a complete list and out of that list to pick out a grand jury. To make the picture complete, the two have to be together under our statute. [26]

Mr. Crockett: And for the further reason, if the Court please, the fact is that the defendants have charged discrimination while we submit that the entire actions of the Jury Commissioners is the matter which is before the Court and not any particular section of their actions.

The Court: To resolve the question so that neither counsel will be responsible, the record may show that the Court has before it the certified copy of its own record which will be made a part of this record as Court's Exhibit 1. If there be any objection thereto, let's hear it.

Mr. Crockett: That is satisfactory.

(Testimony of John E. Reinecke.)

The Court: Mr. Clerk, if you will make it Court's Exhibit 1 as part of the official record of the court.

Mr. Resner: Now, Mr. Reinecke, will you answer the question.

Mr. Crockett: I object to that question, if the Court please, on the further ground that there is no ground shown that this witness is competent to form any opinion as to the occupation or anything else of the individual members of the grand jury. He has testified he is a school teacher in Honolulu and made certain financial studies concerning commercial economic conditions on Maui but there is nothing showing that he knows these persons individually or knows anything whatever about them. No proper foundation laid. [27]

Mr. Resner: If your Honor please the question hasn't been asked yet. Mr. Reinecke can't give the information until he proceeds to answer it. Counsel's objection is pointless in view of that situation. I have asked him to give us the material from where he got his information. Now, you can't prove your case all at once obviously. We expect to call all of the grand jurors and to demonstrate this conclusively to the Court, but at this point this is all that anyone could show.

The Court: What is the question, Miss Reporter, that you have?

Reporter (reading): "Now, with regard to the occupational characteristics and employment rela-

(Testimony of John E. Reinecke.)

tionships of those fifty persons with the firms who dominate the economy of Maui, what is the result of your studies in that respect?"

The Court: The objection is sustained. No foundation laid. Guessing here—only by a lot of hearsay, Mr. Resner. No foundation laid.

Mr. Resner: Mr. Reinecke, have you made some study with respect to the occupational characteristics of the members of the grand jury in this particular case?

Witness: I have. Although Mr. Oshima has done a great deal of the work, I have checked the information with him. The occupations of the persons who appear on the grand jury lists from 1942 to 1947, inclusive, were obtained first from residents of Maui County who have [28] personal acquaintance with these grand jurors, and about 85% of those names were checked against Polks' Hawaiian Directory for—I believe it is 1940 to 1941 the last one was published.

Q. What is Polks' Directory, Mr. Reinecke?

A. This is a standard directory of individuals and businesses in the Territory of Hawaii. Almost everyone of any consequence in the community appears in there, and a lot of people that are not of any consequence.

Q. Are listed in Polks' Directory?

A. Yes.

Q. Is there any other source of your information?

(Testimony of John E. Reinecke.)

A. The primary source was personal information from persons who knew these people.

Q. Checked?

A. Yes. This being a relatively small community, the persons known as to grand jury service in each precinct would be known to a number of people with whom we had contact, and we further checked about 85% of the names in Polks' Directory. It has to be understood that no directory has been issued since that one. Another will be issued next month, I understand, but during the war none was issued. However, it may be assumed that most of the people on the list have stayed in the same socio-economic class, although they may have risen somewhat in their positions they hold. [29]

Q. Now, with regard to your study as compared with the grand jury list in the instant case, what did the results of that comparison show?

A. Well, we took these firms which I have mentioned by name, the agricultural firms and their subsidiaries. I took also a number of other firms which are members of the Employers' Council of Hawaii. I will name them: Haleakala Motors, Limited; Hawaiian Air Lines, Limited; Consolidated Amusement Company, Limited; Maui Amusement Company; Maui Dry Goods and Grocery Company, Limited; Maui Soda and Ice Works; Mutual Telephone Company; Shell Oil Company, Limited; the Von Hamm Young Company, Limited; taking those firms and taking executives, owners in one

(Testimony of John E. Reinecke.)

case, and owners, managerial staff superintendents, foremen, and also clerical workers who are thrown into close contact with management—people like head cashiers and insurance salesmen—taking these all together, I find that from fifty-eight to seventy-two per cent of the persons drawn for grand jury panels come in this category.

Q. That is on the instant grand jury, Mr. Reinecke?

A. No, the figures are as follows: for 1947, 60%; 1946, 62%; 1945, 70%; 1944, 72%; 1943, 72%; 1942, 58%.

Q. What was the percentage again for the instant grand jury?

A. 60%. The remainder of the grand jury were either independent entrepreneurs or their salaried employees— [30] people such as public accountants, government employees, or occupations uncertain.

And then I made a third list of manual laborers.

Q. What did that show?

A. There, taking the years again, the second list, non-laborers who are not connected with these firms—1947, 24%; 1946, 32%; 1945, 22%; 1944, 16%; 1943, 16%; 1942, 24%.

Q. That is what again, Mr. Reinecke?

A. These are non-laborers.

Q. Non-laborers.

A. People who are not manual laborers and who are at the same time relatively independent of these dominant firms and other firms which belong to the

(Testimony of John E. Reinecke.)

Hawaiian Employers' Council. I might explain the Hawaiian Employers' Council includes virtually every firm of importance in Hawaii and a number of second-rank, a few of third. It very closely coordinates the labor relations and collective bargaining of all these firms.

Q. Now, Mr. Reinecke, with regard to the balance of the make-up of the grand jury panel, starting with 1947 and going back over the years, what are the figures with regard to the balance?

A. For 1947, 16%.

Q. Of what group now? These are all other groups?

A. Yes. I haven't broken this down to show where they [31] are employed, but they are manual laborers, skilled or unskilled. That includes cowboys, and one person who is listed as a band member—the Royal Hawaiian Band—though how he could be a member of that band and hold residence in Maui County, I don't know; and one or two people who are just called "unemployed." Again, 16% in 1947; 6% in 1946; 8% in 1945; 12% in 1944; 12% in 1943; and 18% in 1942.

Q. Now, with regard to the socio-economic composition of the population, with regard to positions held by these people, Mr. Reinecke, what does your study of the grand jury reveal in that connection?

A. That has been left to Mr. Oshima. I might say that so far as the socio-economic classification of the whole population of Hawaii—of the Territory—that I have gone into that.

(Testimony of John E. Reinecke.)

Q. Would you give us your information in that regard?

A. I think this probably—if the Court is willing for this to be—present this as an exhibit, that it would save a great deal of time. (Indicating.)

Q. May I see it, Mr. Reinecke?

(Witness handing to counsel.)

Witness: I have four copies of this, Mr. Resner.

(Counsel for the movants showing to counsel for the prosecution.)

Mr. Resner: I am going to offer this as an exhibit, [32] if your Honor please, and ask Mr. Reinecke to explain.

Mr. Crockett: If the Court please, we object first of all because it is—shows on its face it is based upon figures taken in the year 1940. This is 1947. Seven years old at the present time. And second, because the fact that the table which is proposed to be submitted is based upon some index. If it was based upon percentages, it would be a little more intelligible to persons of ordinary understanding, but in order to understand the index—I don't understand just exactly what it refers to—whether it refers to an index based upon percentages—

The Court: I take it this is something Territory-wide, Mr. Resner?

Mr. Resner: I assume so. Isn't that correct, Mr. Reinecke?

Witness: That is correct.

(Testimony of John E. Reinecke.)

Mr. Resner: From which you deduct that Maui being representative of the rest of the Territory, the situation is comparable here?

The Court: The Court can't see any materiality in extending this enquiry into the Territory at large. We are concerned with what the Jury Commissioners did in connection with the population of Maui.

Mr. Resner: I understand, your Honor. I wanted to direct your Honor's attention to what the Supreme [33] Court said in *Smith vs. Texas*, which was one of the questions involving the exclusion of negroes from the jury of one of the southern states and where it was held that an inquiry of this kind is proper.

The Court: The Court will listen to any inquiry into the matter concerning the population of Maui and qualifications in the selecting of jurors, but I am going to restrict you to Maui, please. I am not concerned with the rest of the Territory. The Jury Commissioners haven't coached under Mr. Reinecke for a course in sociology on the Territory, but to consider the population of Maui.

Mr. Resner: This is preliminary to that question.

The Court: The objection is sustained to the offer—that it has no bearing to the precise issues before the Court.

Mr. Resner: I should like to offer it for identification.

The Court: It will be marked Exhibit 2 for identification.

(Testimony of John E. Reinecke.)

Mr. Resner (handing to witness): Mr. Reinecke, with regard to the occupational make-up of the Island of Maui in connection with the various racial groups, can you give us that data?

Witness: Mr. Oshima has that data, I understand, so I would prefer to let him present it. I believe, [34] Mr. Resner, that the data will show a greater preponderance of caucasians in the top occupational groups on Maui or any other plantation of the county than in the Territory generally.

Q. What published works are there, Mr. Reinecke, that you used in part as source material on the basis of the racial composition and economic composition of Maui?

A. For Maui, the only thing available is the 1940 Census Reports.

Q. United States Census Reports?

A. United States Census Reports, and also the—some figures listed in the 1946 Statehood Hearings.

Q. Now, with regard to published works on the subject matter that you have been testifying to this morning, with regard to the socio-economic composition of the Territory and the economic structure, what published works have you gone into in that respect?

A. Well, the two basic works are these. (Indicating.)

Q. Could you tell us what they are, please?

A. One by James H. Shoemaker entitled, "Labor in the Territory of Hawaii 1939."

(Testimony of John E. Reinecke.)

Q. Who published that?

A. It says, "Bulletin No. 687, United States Department of Labor, Bureau of Labor Statistics."

Q. May I have it please?

(Witness handing to counsel.) [35]

Mr. Resner: If your Honor please, I am going to offer this volume into evidence.

(Counsel for the movants showing to the counsel for the prosecution.)

Mr. Crockett: Is counsel going to offer the whole volume into evidence or some particular portion?

Mr. Resner: The entire volume.

Mr. Crockett: We object to the whole volume. As the Court has already observed, the whole volume pertains to matter pertaining to the whole Territory and which is not pertinent here. I ask that counsel be asked to point out certain portions of the volume which is pertinent. The volume, he says, contains matters and reports and statements and articles and other matter of that nature which we submit is not material.

Mr. Resner: All I can tell, your Honor, is that this is an official publication of the United States Government, pertinent to the issues which are before the Court and we deem it material.

The Court: Counsel has asked you to point out any particular part of the book that has any bearing upon the action of the Jury Commissioners in this case.

(Testimony of John E. Reinecke.)

Mr. Resner: The whole volume is pertinent, if your Honor please.

The Court: The objection is sustained.

Mr. Resner: Let me ask you this question, Mr. Reinecke—with regard to Maui, is there any material [36] difference between the population—racial and economic make-up of Maui as compared to the other islands of the Territory?

Witness: In the County of Maui, as in the rural districts generally, there is a larger number of Filipinos, larger proportion of Filipinos, I should say, and persons of the caucasian race are very much more likely to hold preferred socio-economic positions.

Mr. Resner: If your Honor please, I am going to ask leave of Court to submit for identification at a later time so I can get a copy of this volume.

The Court: You may submit to be identified anything you like. As an exhibit, the objection is sustained until it appears that there is something material to the Jury Commissioners' action.

Mr. Resner: Very well. I merely want the record to show that I am asking leave at this time to offer it for identification as soon as I get the——

The Court: You will not be restricted.

Mr. Resner: Now, Mr. Reinecke, what other published works are there that you have used that are pertinent to the inquiry here, Mr. Reinecke?

Witness: There is a volume by Andrew W. Lind, professor of sociology at the University of Hawaii.

(Testimony of John E. Reinecke.)

Q. How do you spell that?

A. L-i-n-d—entitled “An Island Community”; copyright, [37] 1938 with the University of Chicago. The chapter on “Occupational Succession” is pertinent.

Q. What chapter is that? A. Chapter XI.

Q. May I have the book for a moment, please?

A. Particularly this quotation which I have marked here in pencil at the bottom of that page.

(Witness handing to counsel for Movants.)

Mr. Resner: I show the volume to Mr. Crockett, particularly page 255 of the book.

(Handing to counsel for the prosecution.)

Mr. Crockett: We object to that, if the Court please—oh, counsel hasn’t offered this in evidence. I withdraw the objection.

Mr. Resner: I offer the volume itself in evidence, if the Court please, and particularly pages 255 and 256 thereof.

Mr. Crockett: We object to the portions offered in evidence, if the Court please, first because the table there shown—the matter in support of the table or deductions from the table pertain to the Territory as a whole; and second, the table there shows that they are comparisons which go up to the year 1930, which is over 15 years ago—not pertinent to the issues in this case. [38]

The Court: The objection will be sustained.

Mr. Resner: I should like to offer it for identification, if the Court please.

(Testimony of John E. Reinecke.)

The Court: It may be marked with the next succeeding number.

Mr. Resner: I should like leave, however, to withdraw it and file a copy later with the Court so that the record may be complete in this regard. May I particularly point out the paragraphs referred to?

The Court: Paragraphs on page 258?

Mr. Resner: Pages 255 and 256.

The Court: The table that goes back to 1880?

Mr. Resner: No, it starts with 1902 and then it goes to 1915 and then to 1930.

The Court: I see. Since we are concerned with the actions of the Jury Commissioners in 1947 and there is no showing that they have any access to the book or are discriminative against the matters in the book as yet, the objection is sustained.

Mr. Resner: Has there been any appreciable change in the racial composition of Maui in the last fifteen years, Mr. Reinecke?

Witness: I can't say as to the last fifteen years. There has been, so far as I know, no appreciable change in the past seven years.

Q. Is that true of the economic composition of the county as well as the racial composition? [39]

A. That is true, because the economy of the outer islands is pretty stable.

Mr. Resner: For the record, if your Honor please, I assume that Mr. Shoemaker's volume published by the government is 3 for identification and Mr. Lind's will be 4 for identification.

(Testimony of John E. Reinecke.)

The Court: Reserve any numbers in any sequence you desire.

Mr. Resner: Very well. Now, Mr. Reinecke, is there another published documental written work that you used as a source material here?

A. There is one which I used in the past which I do not have with me to present. This is Gilmore's Sugar Manual. The title is "Hawaii Sugar Manual for 1939." This lists the stable personnel of thirty-four of the sugar plantations. These positions, of course, differ from plantation to plantation depending upon what the management thought was important. But taking them one by another, there were 552 names listed of men who held positions from water luna up to manager, and 91% of these, roughly 501 to be exact, 501 individuals or about 91% bore haole names. It doesn't follow in every case that they were of unmixed caucasian blood. Some of them were probably part Hawaiian. As I do not have that here, I don't know the proportions on the four sugar plantations on this Island. However, I do know there has been [40] no appreciable change in the racial composition of the management of those plantations.

Mr. Crockett: Just a minute. I ask that the last statement of the witness be stricken as having no bearing whatsoever upon the issues of this case, too remote, and for the reason that it covers Territory-wide in its scope and is not limited to the conditions existing on the Island of Maui.

(Testimony of John E. Reinecke.)

The Court: Which particular part are you objecting your motion to? I don't identify it.

Mr. Crockett: The witness was identifying the statement taken from a work which he stated was Gilmore's Hawaiian Sugar Manual, dated 1939, in which he stated are a lot of names and various other matters there showing the percentage of races and things of that nature.

The Court: The motion to strike will be granted. I think we had better get down to 1947—the actions of the Jury Commissioners.

Mr. Resner: May I explain to the Court the basis upon which we show this to the Court.

The Court: I think I am quite aware of your basis, Mr. Resner, but I still insist that I am concerned only with the actions of the Jury Commissioners that you challenged for the 1947 jury list.

Mr. Resner: Now, Mr. Reinecke, are there any other [41] published or written works that you have used as source material.

Witness: I have used a copy of the Doctor's dissertation entitled, "The Hawaiian Sugar Industry" by William H. Taylor, presented in the economics department of the University of California.

Mr. Crockett: If the Court please, might I interrupt the witness. In order to save time for the Court, may I ask that the witness be instructed to state to the Court, first, whether or not the matter about which he is going to testify is pertaining to the year 1947; and second, whether or not it is Ter-

(Testimony of John E. Reinecke.)

ritorial-wide in its scope or covers the County of Maui—to save us time and not encumber the record with a lot of material and then have to have an objection and have it stricken.

The Court: He is just reading the title, Mr. Crockett. Let's proceed. Have you finished with the title?

Witness: This was deposited in the University library, May 1935, which answers the first part of your question, Mr. Crockett. As to the second part, there are some references specifically to the County of Maui.

The Court: In May, 1935?

Witness: That is correct, your Honor. [42]

Mr. Crockett: We object to any evidence concerning the records of the County of Maui made in 1935, if the Court please.

The Court: This hasn't been offered, Mr. Crockett, but it characterizes the evidence of the witness.

Mr. Crockett: The reason I made the objection at this time, if the Court please, was because when the witness referred to the other one, he proceeded to give a lot of detail which was not pertinent and I thought it would save time by having him instructed to lay a proper foundation first.

Mr. Resner: Mr. Reinecke, one of the points of the challenge here before the Court is the requirement of the statute that the grand jury understandably speak and read and write the English language.

(Testimony of John E. Reinecke.)

Now, with regard to the population of the Island of Maui, can you give us information concerning the average understanding of the citizens of the county?

Witness: I have not resided in this county. I have traveled here. I have resided in country districts. I have taught in country districts which were no different appreciably from Maui. I should say that practically all of the persons who are born and reared in Hawaii and have attended our public school system at least four years can speak and understand English well enough for practical purposes. Their mastery of written English depends on their general intellectual ability. [43] I have known graduates of high school of the twelfth grade who cannot read English understandably. I have also known persons with less than an eighth grade education who can read it and write it quite understandably and forcefully.

Mr. Resner: If your Honor please, there is only one other thing that I wanted to bring in to Mr. Reinecke, and that is this chart which has been left, and we ask leave of the Court to produce that later this morning or early this afternoon. This is all I have now.

The Court: Does counsel desire to cross examine at this stage or wait?

Mr. Crockett: We are willing to proceed, if the Court please, and allow counsel to introduce his chart later.

(Testimony of John E. Reinecke.)

Cross Examination

By Mr. Crockett:

Q. Mr. Reinecke, I understand that you went through the jury list to determine the occupations of the various persons named on the list.

Witness: That is correct.

Q. Which list did you take into consideration—the grand jury list or the trial jury list?

A. Grand jury list.

Q. You considered the trial jury lists?

A. I did not.

Q. So your figures are based entirely upon the question [44] of the grand jury list alone?

A. That is correct.

Q. The first figure you gave for 1947 was 60%—and what class did you say that that comprised?

A. That comprised what one might call non-laborers from firms which were members of the Hawaiian Employers' Council or which occupied a dominant position in Maui economy or both.

Q. And in that list of firms, I believe you included corporations like the Maui Dry Goods?

A. I did, yes.

Q. And what other firms did you include there other than what you call the "big five" dominant firms?

A. Would you like a complete list for that?

Q. Just the list on Maui that you included in your study.

(Testimony of John E. Reinecke.)

A. That is what I mean—on Maui?

Q. The list that you included.

A. That is what I am referring to. Is that what you want?

Q. Yes, the ones on Maui that you included in your list.

A. Okey. These are the ones from which grand jurors were drawn: Hawaiian Pineapple Company, Limited; American Can Company; Baldwin Packers, Limited; Bank of Hawaii; Bishop National Bank of Hawaii; Haleakala [45] Motors, Limited; Haleakala Ranch Company; Hawaiian Air Lines, Limited; Hawaiian Commercial & Sugar Company, Limited; California Packing Corporation; Consolidated Amusement Company, Limited; Kahului Railroad Company; Lahaina Ice Company, Limited, a subsidiary of Pioneer Mill; Libby, McNeill & Libby; Maui Amusement Company; Maui Dry Goods and Grocery Company, Limited; Maui Agricultural Company, Limited; Maui Electric Company, Limited; Maui Pineapple Company, Limited; Maui Publishing Company, Limited; Maui Soda & Ice Works; Mutual Telephone Company; Pioneer Mill Company, Limited; Shell Oil Company, Limited; the Von Hamm Young Company, Limited; Wailuku Sugar Company; East Mauri Irrigation Company, Limited; Ulupalakua Ranch; and Hana Ranch Hotel and its predecessor.

Q. That also includes what you term the “big five” corporations?

(Testimony of John E. Reinecke.)

A. It does, and also a few local firms which are not directly connected with the "big five", but are members of the Hawaiian Employers' Council.

Q. Then you gave us a figure of 24%. What did that figure include?

A. Those were—24% came from—included entrepreneurs who were not members of the Hawaiian Employers' Council, their salaried employees, such a person as a public accountant, [46] a few government employees, and a few persons whose occupations was uncertain. I don't know whether that would apply for 1947 alone. These in this category—the classes that come in this category were for the whole six years, and whether all those are found in 1947, I can't say without going back over it. I can't say that all of those occupations such as government employees can be found in 1947 as well as in other years.

Q. You mean you did not make any separate computation or calculation of those on the 1947 list?

A. That is available, yes. But this on this table, there is no separate computation.

Q. You mean the 24% is the average for the six years?

A. No, it is not. That is for 1947 alone. The percentage differed from year to year. Perhaps I didn't make myself clear. The sort of person who is included on this list might be found, say, in 1946. He might be found in 1947. I don't know which

(Testimony of John E. Reinecke.)

year the public accountant appears in, but he is the sort of person who would be in the non-laborers not connected with dominant firms.

Q. But the 24%, you say, that is the 1947 percentage?

A. That is for 1947, yes.

Q. Then you gave us 16%. And what class does that include? [47]

A. That includes manual laborers.

Q. And can't you break that down in any more detail? That is, what kind of manual labor?

A. There again, without referring to the lists, I can't say whether these would all appear in 1947, but cowboys, agricultural labor and miscellaneous labor, both skilled and unskilled.

Q. Did you find any locomotive operators on that list?

A. I can't say without referring to the list off hand; however, locomotive operator—if he appears—would be classed as laborer.

Q. That is within the 16%?

A. Within the 16% if he was in 1947.

Q. Did you try to determine by whom these laborers, as you call them, were employed?

A. In most cases, yes.

Q. By whom were they employed in most cases?

A. By these large firms—what I have called the dominant firms.

Q. And also some by the sub-dominant firms

(Testimony of John E. Reinecke.)

associated, as you call it, with the Hawaii Employers' Association?

A. As I remember, yes.

Q. So that the 60% plus the 16% are practically all persons who are employed employees by the same firms?

A. I don't know—yes, I should say off hand. Again, I should have to refer to the lists to be absolutely sure of that. [48]

Q. So that your study does definitely show that the labor class was included on the Grand Jury list not only for 1947, but for the six years immediately prior thereto.

A. It was included in proportions from 6%—

Q. I didn't ask you proportions. I asked—they were included. Is that correct?

A. They were included.

Mr. Crockett: If the Court please, might I ask that the witness, while getting his chart, since he has not made a study of the Trial Jury list, that he be asked to make a study of the Trial Jury list so that the Court will have the benefit of his expert testimony as to the composition of the Trial Jury list also for the year 1947.

The Court: Are you making him your witness, Mr. Crockett?

Mr. Crockett: To that extent, if the Court please.

The Court: I can't compel the witness to make a study.

Mr. Crockett: We withdraw the request. We have nothing further, if the Court please.

(Testimony of John E. Reinecke.)

Examination by the Court

The Court: I would like to ask one question, perhaps, subject to objection of Counsel. Did you make a study of any of the jury list of 1947 as to how many democrats and how many republicans were on it?

Witness: That is impossible to determine except on the basis of rumor. If a person is markedly active on behalf of the republican or democratic party, that would be known in the community.

The Court: So you didn't make any study?

Witness: Since we don't have registration in the primaries here by party, I did not make any such study.

Mr. Resner: As I understand it, your Honor, it is impossible to get that information because you have no way of determining the person's affiliation according to party.

The Court: I don't know whether it is possible or impossible. A good party precinct has pretty good possibilities. However, I am not pressing it. I am just asking the limit of the field.

Mr. Resner: We sought that information, but because of the difficulties attendant, it was not possible.

The Court: Mr. Reinecke, did you examine existing lists of questionnaires that went out to prospective jurors from which the list was ultimately selected?

Witness: I did not examine it, your Honor.

(Testimony of John E. Reinecke.)

The Court: You didn't examine it at all?

Witness: No, sir.

The Court: To determine whether on that list appeared the employment factor? And on the list appeared [50] the understanding of English factor?

The Witness: I did not examine.

Mr. Resner: If your Honor please, may I ask the Court if your Honor's attention is directed to the grand jury or the petit jury.

The Court: Both, because the statute requires that the list be selected—a certain number of names for the jury out of which names a certain proportion be set aside for the grand jury, as I understand it. I don't remember off hand the number sitting in this division, so that I will have to refer to the statute.

Mr. Crockett: The number is 50 for the grand jury and 100 for the trial jury.

Mr. Resner: Section 9800 of the Revised Laws of Hawaii, 1945, states that: "The jury commission of each circuit shall in each year make and file with the clerk of the circuit court at least ten days before the next term of court two certified, separate lists of citizens to serve respectively as grand and trial jurors in the circuit court for the ensuing year. It shall select and list the names of one hundred citizens as trial jurors and fifty citizens as grand jurors."

The Court: Yes.

(Testimony of John E. Reinecke.)

Mr. Resner: And I see nothing, your Honor, that the fifty come from the one hundred.

The Court: No, they don't come from the one hundred, but from the questionnaires sent out. Perhaps [51] you haven't the background of the Court and the Jury Commission to get the start on this process.

Mr. Resner: Perhaps not, but I understand from your Honor's question that the inference was that the larger list contained the smaller, and as we understand it, the Jury Commission and the Court have the duty of providing two separate, distinct lists.

The Court: To that extent you are correct, Mr. Resner. The Court's question right to the witness was did he examine the total questionnaires sent out from which the Jury Commission did go through in making a selection of the one hundred and fifty respectively.

Witness: No, I examined neither of them.

Mr. Resner: Mr. Reinecke, I have no questions at this time, but would you get the chart to which you referred and return with it.

The Court: The cross-examination is finished at this point?

Mr. Crockett: I have no further cross-examination.

The Court: We will take another five-minute recess.

(The Circuit Court recessed at 11:01 a.m.)

(The Circuit Court reconvened at 11:08 a.m.)

HARRY TATSUMI OSHIMA

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Clerk: Will you please state your name?

Witness: Harry Tatsumi Oshima.

Mr. Resner: Your name is Harry Oshima?

A. Harry Tatsumi Oshima.

Q. And where do you live?

A. At the present time I live at 1450 Alencastre, but this is just my temporary address.

Q. What is your permanent address?

A. Washington, D. C.—American University.

Q. American University, District of Columbia?

A. That's right.

Q. What is your profession or occupation, Mr. Oshima?

A. I am an economist dealing with statistical research.

Q. You are an economist and statistician?

A. Yes.

Q. Would you speak up loud enough? Now, what education have you had?

A. I finished at the University of Hawaii.

Q. What year? [53]

A. 1940, with a Bachelor of Arts.

Q. In what particular field of work did you specialize? A. Economics and statistics.

Q. Economics and statistics.

(Testimony of Harry Tatsumi Oshima.)

A. And then I went to the Columbia graduate school studying also economics and statistics.

Q. Columbia University, New York City?

A. Yes.

Q. How many years did you spend there?

A. I was there for about three years—three semester years up there.

Q. Doing work in economics and statistics?

A. That's right.

Q. Yes, what did you do next?

A. Then I took a job, a position with the National Bureau of Economic Research.

Q. What is the National Bureau of Economic Research?

A. It is one of the leading economic statistical bureaus in the country. It is located in New York City, Columbus Circle.

Q. What kind of economic research work does that organization do?

A. It is an organization doing research, which is mainly doing research of a scholarly sort—mainly problems that concern the leading graduate economic faculties—so the main work is statistical. [54]

Q. And they furnish their service to different American universities?

A. No, the scholars of different universities like Columbia, Harvard, Chicago and other leading universities support this.

Q. What kind of work did you do there, Mr. Oshima?

(Testimony of Harry Tatsumi Oshima.)

A. There I was a research assistant to Professor Morganstein of Princeton University. I was doing there statistical work on foreign exchange rates, trying to determine how depressions and prosperity come alternately throughout the world.

Q. And how long did you stay with the Bureau?

A. I was there a little bit over a year.

Q. What did you do next after that?

A. Then I took a job in Washington, D. C., with the Office of Strategic Services, and was there during the war years. That was a part of the United States army. That was a sort of semi-military sort of agency.

Q. You worked there as a civilian?

A. Yes.

Q. How long were you associated with the Office of Strategic Services?

A. About a year and a half.

Q. What did you do there, Mr. Oshima?

A. There I did a study into the population and national income statistics of Japan. There I calculated, or rather estimated the national income of Japan, number of people [55] employed and so forth and so on, which were facts needed for the war effort.

Q. I see. That was statistical research and economic work?

A. Mainly based upon population trends and characteristics.

Q. That was statistical research and economic work, is that correct? A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. And what did you do after your service with OSS?

A. Then I came back for another year of graduate work at Columbia University—sort of a refresher—and there I took further courses, finished up all my other requirements for my doctorate. And then I took a job as an assistant professor of economics at the American University.

Q. And that is where you are now?

A. Yes.

Q. Is that your present position? A. Yes.

Q. Assistant professor of economics at the American University? A. Yes.

Q. What do you teach?

A. The past year I taught a course in general statistics, a course in money and banking, economic theory, and a course in economic history.

Q. Does that cover it? [56]

A. Couple of courses which are not listed but are senior on this work and junior on this work—semi classes, quasi-classes.

Q. Now, Mr. Oshima, have you written for publications?

A. Yes, I have written an article in "Pacific Affairs," which is a quarterly journal of the Institute of Pacific Relations—an article on Japan's economic structure which was partially a statistical study of the trends in Japanese economic categories.

Q. When was that published?

(Testimony of Harry Tatsumi Oshima.)

A. I am not absolutely certain of these dates—1942.

Q. What other works have you published?

A. I think that was a spring issue of the quarterly journal. Also in "Social Research"—another quarterly journal this time of the new School of Social Research in New York City. I published in 1944, I think, an article on "Veblen in Japan."

Q. What other published works have you done, Mr. Oshima?

A. Then there was an article, a co-author job in a book by Steiner, whose initials I have forgotten—"Economic Problems of War"; the book was published in 1941 or 1942.

Q. Were you co-author with some other person of that article, Mr. Oshima, or was this your own work?

A. That was a co-author job.

Q. And who was associated with you?

A. Robert A. Brady.

Q. That is Professor Brady of the University of California? [57]

A. And of Columbia formerly. And also my work in the Office of Strategic Services resulted in a publication by the State Department, together with OSS. The OSS went out of existence at the time when I terminated my job. It was really printed—published under the authorship of the State Department—"National Income of Japan, 1930 to 1944."

Q. Now, in connection with the present case be-

(Testimony of Harry Tatsumi Oshima.)

fore the Court here, Mr. Oshima, and the economic, social, racial makeup of the Maui Grand Jury for 1947, have you had occasion to make a survey of that and to prepare some statistical tables and data? A. Yes.

Q. What sources did you use for the preparation of your tables and testimony here, Mr. Oshima?

A. First of all, the United States Census—Population.

Q. When was that census published?

A. I think it was published in 1941, but it is of 1940.

Q. Has there been any census report by the United States government since that time?

A. No.

Q. How often does the census take——?

A. Every ten years.

Q. That is every ten years on the even number of year—1930, 1940, 1950 and so on, is that correct? A. Yes.

Q. So the next United States census will occur in the year 1950? [58] A. That's right.

Q. This census report to which you refer is not only of the United States generally, but includes the Territory of Hawaii and the Islands of Maui, Molokai and Lanai, is that right?

A. That's right.

Q. With regard to statistical methods, Mr. Oshima, and assuming that you have figures taken by the Census in 1940, what is the validity of those figures with regard to the year 1947?

(Testimony of Harry Tatsumi Oshima.)

A. Well, they are the best one can get considering every source you can possibly put your hands on, and I would say that the estimates that I have made, generally speaking, will not have an error larger than plus or minus five per cent.

Q. That is between 1940 and 1947?

A. Well, the estimates I have made for 1947 in many cases will be based on 1940. Of course, the method of estimation will be dependent upon a great deal of other sources.

Q. But first I am getting to this question of margin of error plus or minus five per cent for the years 1940 and 1947. Do I understand your testimony to be that based on the 1947—1940 census and carrying it to 1947, the records and figures would be the same with a possible five per cent error based upon changes in that intervening seven-year period? Is that right?

A. Yes. [59]

Q. Is that accepted in statistical work of the character that you have been doing?

A. Yes. Statistics is mainly an effort to estimate from what is known to what is unknown because the whole problem in statistics revolves around that procedure of estimating on whatever basis of the sources you have, and this sort of thing I have done here and general estimate work in the field of statistical estimation.

Q. Besides the census, what other sources have you used?

A. Census of Agriculture.

Q. Whose publication is that?

(Testimony of Harry Tatsumi Oshima.)

A. The United States Bureau of the Census.

Q. When was that published?

A. That was published in 1940.

Q. Is that the last such census?

A. To my knowledge, yes.

Q. Do you know when the next is scheduled to occur?

A. I think about the time when the decennial population will be held.

Q. What is the Census of Agriculture?

A. The Census of Agriculture makes an attempt to deal with the characteristics of the—of Hawaiian agriculture, take—how many people employed, to what extent machines are used, what is the status of the different individuals in the Census of Agriculture—whether they are attendants, owners, part owners, [60] employees—what is the average acreage of the individual ownership of farms and so forth.

Q. Is the Census of Agriculture of the United States broken down not only to the Territory of Hawaii, but also to the Islands of Maui, Molokai and Lanai?

A. That's right.

Q. And would you say that the same rule with regard to the margin of error applies to the Census of Agriculture in 1947 as compared with the 1940 general population census?

A. Perhaps less.

Q. Why less?

A. Because the Census of Agriculture deals a great deal with non population matters, financial

(Testimony of Harry Tatsumi Oshima.)

matters, for example, for which there are a great deal of—there is a great deal of statistical sources such as the Hawaiian Stock Exchange Manual. You have a great deal of statistics by the Hawaiian government—City and County government on the various financial situations on Maui so that you can feel that your estimates made on the 1940 Census of Agriculture will have a great deal of confidence for 1947.

Q. What other sources did you use, Mr. Oshima?

A. Census of Business.

Q. Census of Business?

A. In Hawaii, Alaska and Puerto Rico. [61]

Q. And is that a government census, too? A United States government census?

A. United States Bureau.

Q. United States Bureau of the Census?

A. That's right.

Q. That is part of the Department of Commerce?

A. That is right. That is part of the Department of Commerce. The Bureau is a part of the Department of Commerce.

Q. All these things you have been talking about are government activities? That is, activities of the United States government?

A. Activities of the United States government which are authorized by the Congress. Every ten years, Congress will appropriate money to set out detailed regulations as to how the census will be conducted.

(Testimony of Harry Tatsumi Oshima.)

Q. The Census of Business was taken for what year? 1940 also? A. 1939.

Q. Is that the last such census? A. Yes.

Q. Do you know when the next is scheduled to occur?

A. About the same time, perhaps, but you see a great deal of these things have to be acted upon by Congress. I can be fairly certain that the United States population census will be conducted for 1950 because that is something that has occurred every ten years in the past. But the Census of Agriculture and Census of Business [62] require a special appropriation. In the past some years, there were no appropriations set aside.

Q. So it may occur in 1950, but it may not?

A. Yes.

Q. And the last such census anyone can use is 1939—for the Census of Business? A. Yes.

Q. Is that right? A. Yes.

Q. What would be the margin of error, if any, between 1939 and 1947 on the Census of Business?

A. Roughly five per cent, too, I think, depending upon the methods used.

Q. And is your estimate of the degree of error of five per cent based upon the same factors whereby you would make an estimate of error of the other two kinds of census you have been using?

A. Yes. I want to point out the stability of the statistical scene. Since I don't know too much about Maui, by the statistical scene, I was convinced that

(Testimony of Harry Tatsumi Oshima.)

the Maui population factors have been relatively stable; that is, the Board of Health is the best estimate for total population for 1947. Just about a few weeks ago, the head of the Board of Health in his report to the governor showed that there was a large increase in Honolulu, but for Maui there was practically no change as far as the population data went, and it indicates—the percentages indicate a change of only [63] about one per cent in the population, to the population of Maui from 1940 to 1947, which is a fairly good evidence of the relative stability of the situation on Maui. I also called up the individual who worked on these estimates for the Board of Health, and he stated that he felt there was a great deal of stability on Maui and the outside islands.

Q. That is stability of the population of Maui, Lanai and Molokai—is that what you are saying?

A. Yes.

Q. A stability going back over a period of some years?

A. To 1940.

Q. To 1940?

A. Yes.

Q. What other sources—oh, I didn't mean to cut you off.

A. I was going to say that a great deal of these estimates for 1947, 1946 the Board of Health and and other governmental departments are based on the 1947 census.

Q. Is it common for government agencies today such as the local government, the Maui government, to use the census to which you referred as the basis for current estimates?

(Testimony of Harry Tatsumi Oshima.)

A. All valid current estimates must be based on the census.

Q. That is what has been done in all of them?

A. Yes, the Territorial Board of Health.

Q. For 1947? [64] A. Yes.

Q. What other sources did you use, Mr. Oshima?

A. The directory—Polk's Directory of the Territory of Hawaii—excuse me—the directory of the City of Honolulu and the Territory of Hawaii, 1940 to 1941, 1939 to 1940.

Q. Are those the last two such directories published? A. Yes.

Q. And what is Polk's Directory, Mr. Oshima?

A. It is a directory which attempts to give information on the economic status of individuals—as many individuals as they can of the Territory—of the individuals of the Territory of Hawaii. I found that for those individuals who are well known, the Directory is fairly complete although for individuals who are, say, the laboring class, the Directory is not very complete.

Q. Does that Directory include the population of Maui, Lanai and Molokai?

A. Yes. No, there is a separate section on Maui, Molokai, Lanai—Lanai and Molokai.

Q. You had reference to that section in making your statistical reports and tables, is that correct? A. That's right.

Q. And you also used the Grand Jury list for 1947, did you, Mr. Oshima? A. Yes. [65]

(Testimony of Harry Tatsumi Oshima.)

Q. And the Grand Jury lists also for the years 1946, 1945, 1944, 1943 and 1942?

A. That's right.

Q. And the occupational status or position held by the Grand Jurors for 1947 and on back to 1942 as revealed by Polk's Directory? A. Yes.

Q. Is that correct? A. That's right.

Q. And the Grand Jury are identified, are they, by both name and address on the lists in the——?

A. ——No. You mean in the Directory?

Q. Name and address appears in the Directory, does it not? A. That's right.

Q. And their names only appear on the lists—or addresses, too? The Grand Jury lists I am referring to now? A. Yes, both appear.

Q. Now, the first thing I want to direct your attention to, Mr. Oshima, is Table 1. Will you please get out Table 1? Would you hand me the original copy and keep a copy for yourself?

(Witness handing paper to Counsel for Movants.)

Mr. Resner: If your Honor please, I have shown this to Counsel and we have sufficient copies. You made six copies of these, did you, Mr. Oshima?

Witness: Yes. [66]

Mr. Resner: I should like to offer at this point, Table 1 for identification as Defendants' next in order.

The Court: It will be marked for identification with the next numeral.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: Number——?

Deputy Clerk: No. 3.

Mr. Resner: No. 3? 3 and 4 have been saved for the two volumes. This would be 5.

Deputy Clerk: Oh.

Mr. Resner: Would you tell us what—you better give me another copy of Table 1, Mr. Oshima. Now, what is Table 1, Mr. Oshima, which is Defendants' 5 for identification—for the record?

A. Table 1 is the distribution of caucasians and non-caucasians in the population and Grand Jury panel of Maui County.

Q. And is this based upon the statistical sources that you have just mentioned for us? A. Yes.

Mr. Resner: All right, now, if the Court please, I should like to offer Table 1 in evidence and I will ask Mr. Oshima to explain.

Mr. Crockett: We have no objection, if the Court please.

The Court: It may be received with the same number, Exhibit 5. [67]

Mr. Resner: If your Honor please, it may be helpful if your Honor would follow the Table 1.

The Court: As soon as he gets it marked, he will pass it up to me.

Mr. Resner: Very well. Mr. Oshima, first I want to ask you this—on the left hand side of this sheet of paper, Table 1, are noted the figures 1, 2, 3, 4, 5, 6 and 7. Those refer, do they, to the footnotes and therefore the sources which appear on the following page.

(Testimony of Harry Tatsumi Oshima.)

Witness: That's right.

Q. Are there two pages of footnotes to Table 1?

A. Yes.

Q. We haven't got the last page. I think your Honor's page has only one page of footnotes.

The Court: Run to footnote No. 5.

Mr. Resner: Yes, they run to footnote 6 and 7 there.

(Witness handing paper to Counsel for Movants.)

Mr. Resner: I think, your Honor, we might save time by getting them at the noon recess.

Well, let's go back to this Table 1. Mr. Oshima, would you explain what Table 1 demonstrates?

Witness: The purpose of Table 1 is to make a separation of caucasians and non-caucasians in the population of Maui, first of all; and secondly, to make a separation, similar separation for the Grand [68] Jury panel members. Now, in order that the absolute numbers can be more easily grasped, the percentages are calculated and these percentages are comparable with the parallel percentages in the lower part of the table for the panel for the various years. In the first half of the table, footnote No. 1, male and female, this is a total number of males and females in Maui County in 1940, and—oh, first of all, the definitions of caucasian and non-caucasian are taken directly from the census.

Q. What does the census say in that regard?

A. The census includes with what is popularly

(Testimony of Harry Tatsuni Oshima.)

known as "haole", Portuguese and Spanish, and will for the relevant purpose for Maui County, and all the rest on the caucasian side, Spanish, French, Irish and most of the European countries. And the non-caucasians would include the Oriental people. It would include the Puerto Ricans, Filipinos, Hawaiians, part Hawaiians, Koreans, Japanese——

Q. Chinese?

A. Chinese, negroes—non-caucasian.

Q. And any Island group such as Samoan?

A. That would be included in non-caucasian.

Q. The first top of your table then which is a breakdown both with regard to total number and percentages as they are interposed into percentages of the caucasian and non-caucasian elements of the population of Maui, is that correct? [69]

A. Yes.

Q. Now, going down the list, I see that on Maui the total male and female amounts to 12.5 being caucasian and 87.5 being non-caucasian, is that correct?

A. That's right.

Q. In other words, there are 6,989 caucasians and 48,991 non-caucasians—a total of 55,980 persons resident on Maui, is that right?

A. That's right.

Q. And then the next figure shows the male population over the age of 21 years, is that correct?

A. Yes.

Q. Demonstrating that in 1940 the caucasian male group of Maui was 11.2 and the non-caucasian was 88.8, is that correct?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. And next it shows that in the year 1947, the males between the ages of 21 to 60 years amounts to the same figures—that is, 11.2 caucasian and 88.8 non-caucasian. Is that right?

A. Percentages are the same, yes.

Q. Percentages are the same, but the numbers are different. In 1940 there were 2,027 caucasian males, 21 years and over. In 1947, there were 2,208 males, 21 to 60 years—is that correct?

A. Yes. [70]

Q. And in 1940, there were 16,038 non-caucasian males as against 15,517 non-caucasian males, 21 to 60 years, is that correct? A. Yes.

Q. And the male population, 21 years and over, in 1940 totaled 18,065; and in 1947, the male population, 21 to 60 years, totaling 19,725. Is that right?

A. Yes.

Q. Now, the series of 2 and 3, what source is that that you computed on as shown by your footnotes, Mr. Oshima?

A. First of all, the second—the first footnote—first and second footnote indicate that these figures were taken directly from the 1940 Census. Footnote 3 is obtained on the basis of the same. “Second Series, Characteristics of the Population of Hawaii”, is the name of the volume. With this difference—seven years—since from 1940 to 1947, there was a seven-year discrepancy, to each class interval on this Table 19 of the population census volume, seven years was added. To each of the class inter-

(Testimony of Harry Tatsumi Oshima.)

vals in the table referred to in the Census, seven years was added, which would give you a fairly accurate estimate of the males, 21 to 60 years, in 1947.

Q. On the Island of Maui?

A. Yes, I am speaking of Maui.

Q. And when we use the term, Maui, here, we refer to all the three islands that make up the County? [71]

A. Yes, I refer to the County.

Q. Next, we come to the question of male citizens. Is the next figure with regard to male citizens the situation which existed in what year, Mr. Oshima?

A. These are estimates brought up to 1947.

Q. Estimates brought up to 1947—so that that shows that citizens between the ages of 21 and 60 years of the male sex in 1947 amounts to 2,074 caucasian or 16.2%; and there are 10,747 non-caucasians or 83.8%—a total of 12,821.

A. 12,821.

Q. 12,821—is that correct?

A. Yes.

Q. And the source for that is what? How did you arrive at that figure?

A. Footnote 4, which attempts to make a correction of citizenship. This estimate again is based upon the Census, Second Series, 16th Annual, Table 18, Page 27. Shall I indicate the method there?

Q. Yes, I want you to explain.

A. Total caucasian non-citizens outside of Honolulu is equal to 498. This is information given in

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the Census, page 28. Total non-citizens outside of Honolulu, total 16,078. By these two totals, I get a ratio which is 3%—a ratio indicating the proportion of caucasian non-citizens outside of Honolulu. All this is for 1940 yet. Now, the ratio I will use a moment later. [72] In the next line—number of non-citizens, male, 21 years and over in 1940—from the table is equal to 3,941. Now Filipinos are included in the group in the Census which has a category, “native-born”. A “native-born” is taken as equivalent to citizen, but of course the United States Census in 1940 made it a practice of including Filipinos as “native-born” since the Philippines were part of the United States. So in order to get the total citizenship, you will have to deduct the total number of Filipinos who may be “native-born” according to the United States Census definition, but who are not citizens. So I add 6,550, which will give you a total of non-citizens in 1940 of about 10,491. 10,491 multiplied by 3% will give you about 315 caucasians who are non-citizen; minus 315 from 10,491 will give you 10,176 non-caucasians.

Now, we take the 2,208 from note 3, caucasian, and deduct the number of non-citizens and we get 1,893 as the number of caucasian citizens. Deduct 10,176 from 17,517, taken from note 3 of Table 1, and we get 7,341 non-caucasian citizens. Now, we apply a correction to bring this up to 1947 and this correction is in general contained in note 3. This correction note 3—all of the numbers to be added,

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the number to be deducted under note 3 will be the individuals who have reached in 1947 21 years and who have gone beyond 60 years, which is the criterion, I take, for—— [73]

Q. Grand Jury duty.

A. Yes. Sixty years—in excess of 60 years—or, I take it in excess is not qualified for Grand Jury.

Q. Yes, you are taking male citizens between the years of 21 and 60 years?

A. Yes. So I make that correction on the basis of using the data in footnote 3 of Table 1. Deducting also—since a great number of people who grew old, beyond 60 years old, in the non-caucasian group are Japanese and Filipinos—these older Japanese and Filipinos assumed to be non-citizen in 1947—that is, sixty and over, 1,927, according to the Census—this total is subtracted from the correction as applied in footnote 3.

Q. And that brings you out with your number of citizens of both caucasian and non-caucasian origin?

A. That's right.

Q. As listed in the 4th line of Table 1. Now, the next figure that you show is male citizens between the years of 21 and 60 who have four or more years of school attendance, is that correct?

A. Yes.

Q. And what does the four or more years of school attendance indicate? Why that description?

A. Well, I felt that such individuals will qualify for Grand Jury service under the qualification, “un-

(Testimony of Harry Tatsumi Oshima.)

derstandably [74] speak and write and read the English language.”

Q. Yes, and that shows that there are 2,172 caucasians, 15.5; and 11,850 non-caucasians, a percentage of 84.5. Is that right? A. Yes, in 1947.

Q. And then the next thing you have done is take the eight years or more school attendance with the same point in view. A. Yes.

Q. On the proposition of understandably speaking, reading and writing of English?

A. Yes.

Q. Giving you a different group with four more years education, is that right? A. Yes.

Q. And that shows of the caucasians, you have 1,787 or 17%; and of the non-caucasians, you have 8,735 or 83%—a total of 10,522, is that correct?

A. Yes.

Q. And as indicated in footnote 5, were those figures arrived at by the same statistical methods that you employed for determining citizens as in line 4? A. Yes, in general.

Q. Now, the next—the literacy statistics also come from the census, do they not?

A. More accurately, number of school years—number of school years in attendance. [75]

Q. That is shown in the census?

A. Yes, census of 1940.

Q. Yes. Now the next breakdown that you come to is that of registered voters for Maui in 1946, the last period of registration? A. Yes.

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Q. Is that correct? A. That's right.

Q. And it shows that of the registered voters, and this is compared to citizens—that is, all the citizens may not be registered voters.

A. That's right.

Q. But of the registered voters of Maui in 1946, there are 1,542 caucasians, 22.9%; and there were 5,186 non-caucasians, 77.1%—a total of 6,728 of registered voters, is that correct? A. Yes.

Q. That, of course, would include men as well as women? A. No, this is male.

Q. Only male?

A. Yes, I should have that notation in there.

Q. But therefore there would be more registered voters when you add the women? A. Yes.

Q. We will come to that later, will we not, in one of our other tables?

A. That source is not given. The page that it is [76] supposed to be in is missing, but this comes from the County Clerk. Note 6 is a figure of statistics coming from the County Clerk.

Q. Of Maui County? A. Yes.

Q. You have eliminated—when you say registered voters of 1946 on Table 1, that means male registered voters?

A. Yes, I believe so. I will check that afterwards.

Q. But that is with regard to the qualification of a grand juror—the Territorial statute being, a male over 21 and less than 60 years, and having the other requirements mentioned in the statute.

(Testimony of Harry Tatsumi Oshima.)

A. I don't think there is a limit of 60 years.

Q. Not of registered voters—anyone over the age of registration. A. Yes.

Q. Now, the bottom half of the table, Mr. Oshima, represents what?

A. This represents the information on the Grand Jury panel for the various years from 1942 to 1947. First, a determination was made—well, in a similar way makes a division between caucasian and non-caucasian members of the panel for various years and with the total for each of the two categories. The percentage was calculated—a percentage based on 50, the total for the Grand Jury in each year. Now, the information comes mainly from a [77] special investigation that I conducted together with Dr. Reinecke in order to determine the racial background of the members of the panel.

Q. Where you use the expression, caucasian, do you include also those of Portuguese-Spanish origin, Mr. Oshima? A. Caucasian, yes.

Q. All caucasian—that is according to the census definition?

A. Yes, this is according to the census definition, as stated previously for the first part of the table.

Q. Now in 1947, footnote 7, which you will look for during the recess, has reference to the source—

A. Which I have just stated.

Q. Which you have just stated. Now of the instant Grand Jury, the 1947 Grand Jury, 28 of

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those persons or 56% are caucasian, and 22 or 44% are non-caucasian—a total of 50, is that right?

A. Yes.

Q. And that compares with the comparable figures in the table above showing the breakdown according to male and female and age group and educational groups also on a racial basis, is that right?

A. Yes.

Q. For example, there are 22.9% caucasian registered voters and 56% caucasian grand jurors in 1947?

A. Yes.

Q. There are 77.1 non-caucasian registered voters in [78] 1947 and 44% non-caucasian grand jury members in the same year. Is that the comparison?

A. Yes.

Q. Now, with regard to the year 1946, there were 36 caucasians on the Grand Jury panel, a total of 72%; 14 non-caucasians, a total of 28%; a total of 50 grand jurors, is that right?

A. Yes.

Q. And throughout we refer to fifty grand jurors in all of the succeeding years. Going back, in 1945 on the Grand Jury there were 32 caucasians, 64%; and there were 18 or 36% non-caucasians. And in 1944, there were 33 or 66% caucasians, and 17 or 34% non-caucasians. And in 1943, there were a total of 32 or 64% caucasians, and a total of 18 in number or 36% non-caucasians on the Grand Jury panel. And in the year 1942, there were 29 or 58% non-caucasian grand jurors and—caucasian grand jurors, rather—and there were 21 or 42% non-caucasian grand jurors, is that correct?

(Testimony of Harry Tatsumi Oshima.)

A. Yes.

Q. Your population characteristics of the years 1940 and 1947 as seen in lines 2 and 3 of the top part of Table 1, are those population characteristics stable within an error of 5% over the years 1940 to 1947?

A. Perhaps less—about 3%.

Q. 3% error. Does that complete Table 1, Mr. Oshima?

A. Yes.

The Court: We will take a recess until 1:30.

(Circuit Court recessed at 12:00 noon.) [79]

(Circuit Court reconvened at 1:30 p.m.)

Mr. Resner: If your Honor please, in order to expedite the proceedings and not waste any of the Court's time, we are preparing subpoenas for additional witnesses to bring them in the morning. Now, we will subpoena the Jury Commissioners, of course, and we desire the presence, as our challenges show, to examine in voir dire the fifty members of the panel.

The Court: For what purpose?

Mr. Resner: To put in the record their occupations, racial groups, age, and information of that nature pertinent to this particular challenge, which is the direct source, if your Honor please.

The Court: Yes, but I think that can be obtained from the questionnaires without interfering with their livelihood. If that is all you want, it should appear in their questionnaires.

Mr. Resner: We are subpoenaing the Jury Commissioners—and the questionnaires, that is all right.

(Testimony of Harry Tatsumi Oshima.)

But this other thought occurs to Counsel, and that is that we have directed to Counsel, as the statutes and the cases appear, not only a general challenge for cause on the basis that our challenge shows of a general nature, but we are also objecting to a great many of the grand jurors individually upon the grounds of bias and prejudice. [80]

The Court: But you have stated no bias and prejudice and no fact from which that can be concluded, Mr. Resner.

Mr. Resner: I think, your Honor, that we have.

The Court: All you have stated is that they belong to the employer class, and I know of no bias and prejudice that because a man employs another that he is prejudiced against the defendants in person.

Mr. Resner: We have alleged, if your Honor please, on page 2 of our challenge directed against the grand jurors for cause that the "aforesaid grand jurors, and each of them, are biased and prejudiced against defendants; that said grand jurors are members of the employer class or their representatives; that said grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out of which the instant cases arose; that defendants cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors."

In other words, we have a direct interest——

(Testimony of Harry Tatsumi Oshima.)

The Court: You have alleged nothing but conclusions of law. You have alleged no fact upon which the Court as a matter of law could adjudicate *prima facie* prejudice.

Mr. Resner: Well, if I read the decisions of the [81] Supreme Court of the Territory correctly, your Honor, I think that is sufficient. I will be glad to show your Honor the cases.

The Court: I am fairly familiar with the cases on that question, bias and prejudice, if you allege facts from which *prima facie* conclusion would be drawn, admitting the truth of the facts as they are alleged. But you allege no fact except that they belong to the employer class, and I know of no conclusion of law that because a man employs another, he has bias and prejudice against workmen.

Mr. Resner: It goes further than that, Judge. We have alleged that because of the recent pineapple strike in which these grand jurors had a direct business interest and in which these defendants were involved, that a prejudice exists because of the activities on the part of these defendants in the minds of these grand jurors and that situation is—that is an allegation of fact.

The Court: This is not a trial of a union. This is a gathering of the Grand Jury, as I understand it, for the Prosecution to present evidence that persons have violated the statutes against the peace of the community and gone beyond any protection that they might have. There is nothing that makes on

(Testimony of Harry Tatsumi Oshima.)

a Grand Jury showing a matter of disqualification because someone may even belong to the very concern in which these [82] people also worked. The question is did they go beyond the scope and violate the laws against violence, beyond any proper—well, let's put it—peaceful picketing that they are permitted under the statute and so violate the Territorial law against violence? If they did, all right—even if a man knew of it and stood by and belonged to the employer class, and therefore knowing so and in that sense could be said to be biased and prejudiced—since the Grand Jury is an accusatory body and it is not a finder of the final guilt or innocence, any person who knows of an offense against the laws of the Territory would be obligated to act even if he were a grand juror.

Mr. Resner: The point is, Judge, that in cases starting with *Norris vs. Alabama*, the United States Supreme Court has said that even a Grand Jury, which is an accusatory body, must be fair and impartial to the same extent that the petit jury is because if a grand juror is biased and prejudiced against a particular person presumably who has committed a crime according to the Grand Jury, an indictment may follow as a result of prejudice which it would not follow from a Grand Jury fairly and democratically selected. That is why the Supreme Court says you are entitled to an impartial Grand Jury, as well as petit jury.

The Court: What I am pointing out to you, Mr.

(Testimony of Harry Tatsumi Oshima.)

Resner, is that your challenge sets forth no fact [83] upon which bias and prejudice flows as a matter of law.

Mr. Resner: Well, we have the affidavit of John Maile which is attached to our challenge for cause, if your Honor please. We have alleged therein that Kenneth Auld is connected with the California Packing Corporation; that the Messrs. Richard H. Baldwin and Edward H. Baldwin are plantation executives and have financial connections with the pineapple companies; that Mr. Edward S. Bowmer is connected with the Wailuku Sugar Plantation. And we have alleged that these connections in connection with the pineapple strike has caused a prejudice on the part of these grand jurors against these defendants, and you cannot gainsay the fact that these defendants are members of a labor organization which was involved in that particular dispute, and as Mr. Justice Jackson stated in the case of *Faye vs. People of New York*, where the defendants in a criminal case are those who are involved in a labor dispute, then the situation may be such that whether or not they are fairly and democratically selected in the cross section of a community is of importance.

The Court: You have alleged nothing there by which you are justified in having an examination of the individual jurors, and the Court is not going to turn this into a fishing expedition on examination of the individual grand jurors. That can be

(Testimony of Harry Tatsumi Oshima.)

covered by the proper [84] admonition to the jury when it assembles that any person on that Grand Jury who finds himself prejudiced against any of the defendants should withdraw.

Mr. Resner: It is one thing to submit to the Grand Jury the question of disqualifying himself upon his own investigation into his mind and soul; it is another thing to permit Counsel for the accused to investigate those jurors on voir dire and to find out what facts their testimony reveals, and as the Territorial statute says: "Before the grand jury is sworn, the prosecuting officer, or any person held to answer a charge for a criminal offense may challenge the panel, or an individual juror, for cause to be assigned to the court. All such challenges shall be tried and determined by the court."

The Court: You have failed to emphasize the proper prelude in that statute—may be challenged for cause assigned. All you have done is assign the general conclusion of law that because these men have a certain economic position that their minds are prejudiced.

Mr. Resner: We have alleged more than that. We have alleged their connection with interests who are at odds with workers in the recent pineapple strike out of which flows, we think, the special state of mind and prejudice which would cause them to be prejudiced [85] and biased against these persons accused here.

The Court: The Court announces the fact right

(Testimony of Harry Tatsumi Oshima.)

now that the Court will not turn this into a general free-for-all examination of every member of the panel, but if you have any facts indicating that any of these gentlemen have, by voice or conduct, given cause in fact to draw the conclusion that they are prejudiced against any of these defendants in the criminal matters before the Court, the Court will listen to them. But all you have done is to impinge into this affidavit a non-existent class hatred by employers against laborers, whereas the other situation is entirely subordinated—the situation that the employees would be crazy to be hating their employers. Whether the laborer does hate the employers is a matter for your own conscience.

Mr. Resner: I am sure, your Honor, I make no feeling for any group of people or any particular person. Every man has his own conscience and convictions. I might point out to the Court that in several Los Angeles cases from the Superior Court of the state and in the District Court of Los Angeles, the judges have uniformly permitted the kind of inquiry I respectfully ask your Honor to allow us.

The Court: I am permitting you to call the Jury Commissioners and find out what they did, and I am [86] permitting you to find out, either through yourself or the lips of your clients, that anyone of these gentlemen who has been subpoenaed as prospective grand jurors has evidenced in fact any animus against the persons of any of these defend-

(Testimony of Harry Tatsumi Oshima.)

ants. I will listen to that, but I will not listen to a fishing expedition on your part to go into the mental condition of each of the jurors unless you prelude it by a substantial showing in fact that they have given voice to that and have shown by their acts in the community that they are not going to act as grand jurors under the oath which they take—to act unbiased and without prejudice as against the rich and the poor and give them equal justice in this court.

Mr. Resner: I wanted to point out to your Honor that in the Los Angeles cases, the investigation was allowed, not only of the jury commissioners as such and the officials of court who selected the jurors, but it was permitted of the jurors themselves.

The Court: I am not responsible for the Los Angeles court.

Mr. Resner: I cite that as authority. I assume your Honor is interested in authorities and practices of other courts.

The Court: You may proceed with your examination this afternoon. We will take up the specific problem when it arises, but I have given you a little warning [87] in advance and an indication of the Court's mind on the point.

Mr. Resner: I merely for the record want to save my exception and take exception to the Court's ruling that we cannot on voir dire examine these jurors and that our individual challenge for cause

(Testimony of Harry Tatsumi Oshima.)

to the individual jurors as such, according to your Honor insufficiently states the basis to hold a voir dire.

The Court: At which time I so rule, Mr. Resner, and the exception is allowed.

Q. (By Mr. Resner): Mr. Oshima, with regard to Table 1, which we are reviewing at this point, is there a method employed by statisticians to determine the area of probability? That is, taking this particular Grand Jury with the percentages that it does have in 1947 of caucasians and non-caucasians, and assuming a random selection of the grand jury of fifty from amongst the registered voters who conceivably would be eligible, is there some basis that you have for determining how many times this particular kind of a racial makeup would occur in a grand jury of fifty?

Mr. Crockett: We object to that question, if the Court please—rather involved. Counsel mentioned the fact of random selection. The commission is not under any obligation to make a random selection. As a matter [88] of fact, they are specifically requested to pick out people who in their opinion are qualified to act as jurors.

The Court: The objection is sustained on the grounds stated.

Mr. Resner: May I point out to your Honor that the Supreme Court—

The Court: The Court has ruled, Mr. Resner, and I tried to make it plain this morning that argument comes before ruling, and not after.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: I didn't get a chance to make a——

The Court: That is perfectly true, and the record may so show.

Mr. Resner: I will refer your Honor to a Supreme Court decision. I should like to make an offer of proof, if I may, your Honor.

The Court: You are entitled to an offer of proof.

Mr. Resner: Very well.

The Court: As long as it is an offer of proof of fact and not an argument, Mr. Resner.

Mr. Resner: I don't know what the story of that is, your Honor. I am trying to proceed in an orderly fashion here and desire justice to my clients, to the courts and to justice. The offer of proof which I wish to make to the Court is this: that were I permitted to ask the question of Mr. Oshima and were he [89] permitted to answer, the proof would be that not more than once in ten million times, if this grand jury were selected at random, would the racial makeup of the grand jury come out as it has in 1947 on Maui; namely, 56% caucasians and 44% non-caucasians, when regard is had to the selection of those persons from the registered voters of 1946 on Maui; of whom 22.9 are caucasians and 77.1 are non-caucasians. In other words, this kind of a grand jury would happen not more than once in ten million times. And conversely, we would prove, if the questions were permitted and the answers allowed, that a grand jury selected at random

(Testimony of Harry Tatsumi Oshima.)

on Maui from amongst the registered voters, male voters, of 1946—would prove that the non-caucasian makeup of the grand jury would range from 62 to 70% and that the caucasian composition of that grand jury would range from 30 to 22%.

The Court: I understand your objection goes to the offer of proof as well as to the question, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

The Court: The objection is sustained.

Mr. Resner: We take an exception to your Honor's ruling that we cannot be permitted to prove it and also your Honor's ruling on the offer of proof.

The Court: Exception allowed. [90]

Q. (By Mr. Resner): Mr. Oshima, would you turn next to Table 2—and may I have the original copy of that. Do you have the original?

Witness: I think the original is there.

Q. (By Mr. Resner): Have you got another sheet? I wanted to be able to give Counsel here——

Witness: Here is another one.

(Witness handing to Counsel for Movants.)

Mr. Resner: I should like to offer Table 2 for identification.

The Court: Next number.

Q. (By Mr. Resner): Have you Table 2 in front of you, Mr. Oshima? A. Yes.

Q. Will you tell us, please, what it represents and indicates.

(Testimony of Harry Tatsumi Oshima.)

A. The main difference of Table 2 from Table 1 is that this time the column, the first column, caucasians and part-Hawaiians, was somewhat modified. On the Table 2, which was just entitled, "Caucasian", without the part-Hawaiians in the population statistics, we added to the total caucasians the part-Hawaiians—deduct the part Hawaiians from the non-caucasian column. Now, the first row of statistics was taken, of course, from Table 1 with the modification I just stated—adding the total of part- [91] Hawaiians to the caucasians of Table 1, deducting the same from the non-caucasian.

Now, for the panel, a similar treatment was applied. Members of the panel who were caucasians and part-Hawaiians were included under column, "Caucasians and Part-Hawaiians." They were deducted or excluded from the column, "Non-Caucasian", so that now that column, "Non-Caucasian", for both the panel and population will exclude part-Hawaiians—which was not the case for Table 1.

Q. The sources for this table were the same as the sources for Table 1, is that correct?

A. That's right.

Q. And the statistical method of computation the same? A. Yes.

Mr. Resner: If your Honor please, I will offer Table 2 in evidence at this point.

Mr. Crockett: No objection.

(Testimony of Harry Tatsumi Oshima.)

The Court: It may be admitted in evidence with the same number.

Mr. Resner: As I read it then, Mr. Oshima, it provides—I mean you find this: that the total male and female population between the ages—no, of the total male and female population of Maui as of 1947, there were 14,904 or 26.6% caucasians and part-Hawaiians, is that correct? [92]

A. Yes, sir.

Q. And there were 41,076 or 73.4% non-caucasian? A. Yes.

Q. And the next figure is that of males between the ages of 21 and 60 years, who are citizens, with four years or more school completed. And there are 3,692 or 26.2% of those who are caucasian and part-Hawaiian. A. 3,672.

Q. 3,672, yes. And there are 10,350 or 73.8% who are non-caucasian. A. Yes.

Q. Now this description of caucasian and part-Hawaiian, does that mean caucasian and caucasian-Hawaiian—is that the racial makeup?

A. About 95% of them will come under that classification.

Q. On the panel, you have broken it down as follows, and the inquiry reveals this, does it: that on the 1947 or present panel of 50, that 38 of those persons or 76% are caucasian and part-Hawaiian?

A. Yes.

Q. And 12 or 24% are non-caucasian?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. Then going back over the succeeding years immediately preceding, in 1946 there were 39 caucasians and part- [93] Hawaiians or 78% ; and there were 11 non-caucasians or 22% ? In the year 1945, there were 42 or 84% caucasian and part-Hawaiian, and 8 or 16% non-caucasian. A. Yes.

Q. In the year 1944, there were 37 or 74% caucasian and part-Hawaiian; and 13 or 26% non-caucasian? A. Yes.

Q. And in 1943, there were 41 or 82% caucasian and part-Hawaiian; and 9 or 18% who were non-caucasian? A. Yes.

Q. And then in 1942, the first year you took, there were 40 or 80% who were caucasian and part-Hawaiian; and 10 or 20% who were non-caucasian? A. Yes.

Q. That's right. Very well, let's turn to Table 3—oh, if your Honor please, I had intended to ask Mr. Oshima at this point the percentage of probability. In view of your Honor's ruling on the previous question, and I assume your ruling will be the same, I should like to make an offer of proof on this particular table.

Mr. Crockett: We object to the offer, if the Court please, on the same ground previously stated.

The Court: You may make your offer.

Mr. Resner: My offer is this, your Honor: that were Counsel permitted to ask the questions and were [94] the witness permitted to answer, his testimony would be that with regard to the instant

(Testimony of Harry Tatsumi Oshima.)

or 1947 grand jury panel of 50 persons, that if it were selected at random from amongst the population of Maui with regard to the registered voters eligible for jury duty, according to statutory qualifications, that the racial characteristic of this grand jury, which is made up of caucasians and part-Hawaiians in the percentage of 76 as against non-caucasians with a percentage of 24%, would occur once in twelve million times; and on the other hand, if the grand jury were truly selected on a random basis, that the probabilities are that in excess of 70% of the grand jury would be non-caucasian and less than 30% would be caucasian and part-Hawaiian or caucasian-Hawaiian.

Mr. Crockett: We object to the offer, if the Court please, on the same ground previously stated.

The Court: Objection sustained.

Mr. Resner: Very well, we will take an exception.

The Court: I can see no use in wasting time on such abstractions. I think it is time to get down to the meat of the question—what this Grand Jury Commission did.

Mr. Resner: What is the basis and the reason, Mr. Oshima, for the combination of Table 1 and Table 2?

Witness: Well, in looking over the occupational status or economic position of part-Hawaiians, most [95] of whom are part-caucasians, I found that a great number of these people, probably 80 to 90%,

(Testimony of Harry Tatsumi Oshima.)

occupy very important positions—higher-ups, so to speak. And in talking with other social scientists, I find that this is something to be expected of the Islands in view of the social, economic, historic background of the Islands. In view of this, statistically the real picture that Table 1 is trying to bring out will come out much more plainly if modifications, such as Table 2 have contained, are presented.

Mr. Resner: Thank you. Now, if your Honor please, I show Counsel Table 3 which I should like to offer for identification at this point.

The Court: The next ensuing number.

Mr. Resner: That will be No. 7, is that right?

Deputy Clerk: Number 7.

Mr. Resner: What is Table 3, Mr. Oshima?

Witness: Table 3 is a distribution of employed workers by major occupation group in the population of Maui County and in the panel.

Q. And this is the breakdown of population groups in the community as compared with the population group on the instant Grand Jury, is that correct?

A. Yes. The title and the categories in the table are taken directly from the United States Bureau of the Census 1940 report. [96]

Q. Where you say, "Major Occupation Group", and there are twelve classes of occupations or workers, is that the breakdown as it occurs in the census?

A. Yes, except with one item.

Q. And that is what?

(Testimony of Harry Tatsumi Oshima.)

A. That item is merely the combination of professional and semi-professional workers into one class, as I have it in my table here. Instead of making a separate class, since they were treated more or less in the same category I combined both of them.

Mr. Resner: Very well. I should like to offer Table 3 in evidence at this time, if your Honor please.

Mr. Crockett: No objection, if the Court please.

The Court: It will be marked in evidence with the same number.

Q. (By Mr. Resner): Mr. Oshima, this table is broken down according to male and female workers on Maui, and then according to male workers. Is that correct? A. Yes.

Q. And then that male and female constitutes your first breakdown; male your second; and your third breakdown is what, Mr. Oshima?

A. The third breakdown is a column which is a slight modification of the male column—which is not used for any purpose here but which is used for the later table. It is an attempt—that column is entitled, “After Deductions For Male Non-Laborers From Classes, [97] 4-12”. It is an attempt to separate the type of workers who may come under the category from the viewpoint of income and from other criteria into the managerial, supervisory group of workers, so that as noted in the footnotes—column 5 is the column I am discussing—“Deduc-

(Testimony of Harry Tatsumi Oshima.)

tion of Male Non-Laborers from Classes, 4-12"—well, in Class No. 5, the foremen and some of the entrepreneurial craftsmen are deducted, so you see that total slightly smaller than the previous column—the comparable total.

In the next class, operatives and kindred workers, some of the entrepreneurial operatives are separated. Class 7 is—that column is the same as the one for the previous column. For class 8 also some deductions have been made from the previous column—574 minus the appropriate number, 487, and this deduction is mainly because of certain City and County—not officials, but policemen, firemen who cannot be thought of as laborers. Similarly for No. 9, class 9—farm laborers and farm foremen. The foremen have been deducted from that category because foremen are not classifiable as laborers. The next one is the same—11 is the same and 12 is the same. In other words, the modification that I attempted to do in that column— [98] these modifications were aimed at the segregation of non-laborers from classes 5 to 12, inclusive.

Q. Now, then, the figures in your twelve breakdowns show this, then, do they? Without—reading from the record because it is in evidence now—the numbers according to male or female, or the correction, but only according to occupational groups and numbers in percentages on the panel, we find this to be the case: that on the instant panel of pro-

(Testimony of Harry Tatsumi Oshima.)

fessional and semi-professional workers, there are two in number, or 4%. Is that right?

A. Yes.

Q. What is included among such persons as professional and semi-professional persons?

A. Under that you have the inclusion of teachers, for example, and—exactly what two people in the panel were classified as in the first category, I don't remember, but that category could have doctors, dentists, engineers, chemists, different cultural—

Q. Yes. Now the second class is farmers and farm managers of whom there is one, or 2% on the 1947 Grand Jury. Now, what is meant by that classification, farmer owner?

A. That one person, I happen to remember off-hand now, is the manager of a plantation, which, under the census classification, falls in that category. [99]

Q. Very well. Third, we have proprietors, managers and officials, and executives of farms, of whom there are 33, or 66%, on the instant Grand Jury. Is that right?

A. No, that column—I am sorry—that class 3 should read, "Proprietors, managers and officials, except farmers."

Q. Oh, "except farmers"—which is the second group, which is group 2?

A. That's right. No, not necessarily second. The

(Testimony of Harry Tatsumi Oshima.)

executives of the farm, if you can think of that term, would be coming in the second.

Q. Except those included in group 2—group 3 includes those described except those described in group 2? A. In general, yes.

Q. The figure is correct—33 of those, or 66%, on the present Grand Jury? A. Yes.

Q. And the next is “Clerical, sales and kindred workers,” of whom there are five, or 10%, on the Grand Jury? A. Yes.

Q. Does that include retail workers?

A. Yes, retail workers, cashiers, bookkeepers, typists, stenographers, salesmen.

Q. Now the 5th class is “Craftsmen, foremen and kindred [100] workers,” of whom there is one, or 2%, on the instant Grand Jury. What is included in that description?

A. In that description, you have the skilled workers who are—who belong more to the feudal skilled, maybe, rather than the mass production, machine skilled. The “Operatives,” which are the next, will contain those who are skilled with complex machines.

Q. What is a good example of a craftsman, for example? A. Carpenter.

Q. Now, the next is “Operatives and kindred workers,” of whom there are two on the Grand Jury, or 4%.

A. They are the individuals who operate machines. They will be machine tenders, probably ma-

(Testimony of Harry Tatsumi Oshima.)

chinists, truck drivers; locomotive engineers would come under there.

Q. All right. Now next is "Domestic service workers"; there are none on the panel. That is correct, isn't it?

A. Yes. That category includes servants, maids in private homes, cooks and so forth.

Q. The 8th group is "Service workers, except domestic," of whom there is one, or 2%, on the Grand Jury. That includes what?

A. That is firemen, I think, of the government, of the city and county, of the County of Maui.

Q. The 9th group is "Farm laborers and farm foremen," [101] which are put together in the census, and there is one, or 2%. Do you know who that one is on the Grand Jury?

A. I think that includes a luna on one of the plantations—agricultural operation department.

Q. Then the 10th group is "Farm laborers," of whom there are none on the Grand Jury?

A. Yes.

Q. The 11th group is "Laborers, other than farm and mine" workers, of whom there is one, or 2% on the Grand Jury.

A. Yes. That probably includes laborers who may be in the mill, who have no skill so that they will not come under operatives, but who—say, semi-skilled workers who cannot come under classification 6.

Q. 12 is the last and that is for whom occupa-

(Testimony of Harry Tatsumi Oshima.)

tions are not reported, of whom you have three, or 6%, on the Grand Jury.

A. Yes. Those are the individuals from whom our information is not very certain, or I don't have any information.

Q. Your investigation revealed, did it, that there were no farm laborers as such on the Grand Jury?

A. 1947? No.

Q. 1947. Just by way of comparing the population makeup of those qualified for jury duty according to [102] the statutes with those who are on the jury according to occupation groups, would this be the way to make the comparison, Mr. Oshima? Take, for example, group 3 which includes proprietors, managers and officials—that there are 681 males in that category, or 3.86%, as against the farm laborers and farm foremen of whom there are 8638 males, or 48.92%.

A. Well, yes. If you want to, you can include the farm foremen—you use the figure next to it; 8,195 will be an estimate of the farm laborers only, without the foremen.

Q. In other words, the next figure only would show those non laborers excluded, and you would have 8,195, or 46.41% just ordinary farm laborers?

A. Yes.

Mr. Resner: Now, if your Honor please, I desire to make the same offer of proof with regard to probability of selection on a random basis of this Grand Jury as used on the racial point previously

(Testimony of Harry Tatsumi Oshima.)
made on the first two tables. I want to make an offer of proof in view of your Honor's ruling.

The Court: Make your offer.

Mr. Resner: Well, rather than repeat it, I should like to refer back to the offer previously made and to say that the offer will be the same. Selected at random, this kind of a grand jury on [103] an occupation basis wouldn't happen more than once in sixteen million times.

Mr. Crockett: We object to the offer on the same grounds, if the Court please, as previously stated.

The Court: The Court sustains the objection on the grounds that it has no informative effect upon the issue as to whether this group of Jury Commissioners deliberately have gone against their duties under the statute.

Mr. Resner: I desire to take an exception to your Honor's ruling.

The Court: Exception allowed.

Mr. Resner: Turn please to Table 4, Mr. Oshima. I will offer Table 4, which I have shown Counsel for the Prosecution, as defendants'—

The Court: Take another number. What is the next one?

Deputy Clerk: Movants' Exhibit 8.

The Court: For identification.

Mr. Resner: What is Table 4, please, Mr. Oshima?

Witness: Table 4 is—the title of the—the title is taken from the United States Census—"Class of

(Testimony of Harry Tatsumi Oshima.)

Worker of Employed Persons Except on Public Emergency Work, Maui County.” “Class of Worker of Employed Persons Except on Public Emergency Work” is the name of the [104] table taken from the 1940 Census. These are the estimates I made, since the most detailed census report doesn’t give any exact figure for the different categories for Maui, although it does give for the Territory and the city. On the basis of various statistics of these various sources, I made these estimates as follows: Total employed is the same as in the occupational table, Table 3; mainly, 21,865. I am talking about the table on top.

In the United States Census, the total employed for this table is broken into four categories—wage and salary workers; employers and own-account workers; unpaid family workers; and class of worker not reported.

Q. And that shows what with regard to numbers and percentages, Mr. Oshima?

A. My estimates show 89.4% for wage and salary workers; 8.6% for employers and own-account workers; 1.6% for unpaid family workers; and .4% for the last category—class of worker not reported.

Q. With regard to the bottom part of the table, what does that show?

A. This bottom part makes an attempt to divide up wage and salary workers—a total, which is derived from the table on top, namely 19,550. This

(Testimony of Harry Tatsumi Oshima.)

total is divided up into the following five groups: Professional and [105] semi-professional workers employed, and therefore receiving salaries, of course; Managerial-supervisory employees; Government officials; Clerical, sales and kindred workers; and laborers.

Now, each of them—well—in the footnote, you will find a description of the groups contained in each of these five categories. Now, for professional, my estimates indicate that the male and female, first column, professional and semi-professional workers employed constitute 5.5% of the wage and salary workers; Managerial-supervisory employees, 2.8%; Government officials, .9%; Clerical, sales and kindred workers, 8.3%; and the last category, laborers, 82.5%.

Q. Now, you carry that over, do you, and compare it with the male population of Maui and then with the category called, "Qualified Male" population, the latter being those qualified for jury duty, grand jury duty? A. Yes.

Q. Is that the purpose of the carrying over?

A. Yes.

Q. What do we see by that comparison, Mr. Oshima?

A. We see that the laborers constitute 80.2% of the wage and salary workers, and all the rest of the workers who are salary receivers, 19.8%.

Q. In other words, in breaking it down into numbers, [106] there are 12,073 qualified males, are there? A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. On Maui? A. Yes.

Q. And that includes those who have registered, as well as those who have not registered?

A. That's right.

Q. And there are 2,387, or 19.8%, in occupational groups or activities other than laborer, is that correct? A. Who are employed?

Q. Who are employed. A. Yes.

Q. Have income. A. Yes.

Q. And there are 9,686, or 80.2% of laborers who are employed? A. Yes.

Q. Among qualified persons for jury duty?

A. Yes.

The Court: I would like to ask the witness a question in connection with your last question, Mr. Resner.

Mr. Resner: Yes, your Honor.

The Court: Counsel has used the term "qualified for jury service." Do you have any personal knowledge of the qualification of any of these 9,000? [107]

Witness: No.

The Court: You are taking it from statistical tables of some sort?

Witness: Yes.

The Court: Simply by reason of the question whether they have gone to school to a certain grade?

Witness: That is one of the qualifications, yes.

Mr. Resner: If your Honor please, there are more. I mean the statutory qualifications set out in the Territorial act——

(Testimony of Harry Tatsumi Oshima.)

The Court: I am simply trying to find out, bring it down into the record that he is simply dealing in abstract statistics and nothing concrete.

Mr. Resner: The statistics have relation to the population, which is very concrete.

The Court: Proceed.

Mr. Resner: That completes Table 4, Mr. Oshima? Is that correct?

Witness: Yes.

Q. Would you turn, please, to Table 5. If your Honor please, I should like to offer Table 4, which we have just been referring to.

The Court: It may be received and marked, together with the other tables.

Mr. Resner: We will take No. 8 in evidence.

The Court: Same number as was used for identification. [108]

Mr. Resner: I should like to hand to the Clerk for identification at this point, Table 5 for identification, next in order.

The Court: No. 9 for identification.

Mr. Resner: I have served Counsel with a copy. Now, what does Table 5, which is 9 for identification, show, Mr. Oshima?

Witness: The table is, in a way, a continuation of Table 4.

Q. Yes.

A. The first—the part of the table coming under “In the Population” are taken over—our estimates are mainly based upon Table 4. The method of esti-

(Testimony of Harry Tatsumi Oshima.)

mation is in the footnote. Most of the figures are direct copies of Table 4. "In the Panel"—the different years for the panel, the occupational status of the members of the panel from 1942 to 1947 were looked up in the directory mentioned previously, and their status. These are the five classifications I have on this table: Managerial-supervisory; Entrepreneurs; Clerical, sales; Laborers; and all others. They were looked up and they were added up for each of the categories for each of the years, and you find the percentages presented in the section under, "In the Panel"—under the heading, "In the Panel," for different years. The percentages, any of the percentages, divided by two, [109] will give you the actual number of panel members who were classified in that particular place. For example, 1947, the managerial-supervisory category indicates 66%. 66 divided by 2 gives you 33, which is the actual number of the members on the panel who fall within that category.

Q. Let me ask you this, Mr. Oshima, at this point. If we take, first, the managerial-supervisory group, we find that among male and female, there are 709, or 3.2% Is that correct? A. Yes.

Q. And then we find that there are 709 of the male sex, or 4% of the population of Maui.

A. Yes.

Q. Is that right? A. Yes.

Q. And then the next figure shows that there are 709—the same figure all the way through?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. Who are qualified under the statute for jury duty, or 5.6%. A. Yes.

Q. Is that right? A. Yes. .

Q. And then you carry it into the next column and you compare it with the panel and we see that in 1947, 66% of the panel is made up of managerial-supervisory persons. Is that right? [110]

A. Yes.

Q. And in 1946, 56%; in 1945, 66%?

A. Yes.

Q. And in 1944, 62%. A. Yes.

Q. And in 1943, 62%. In 1942, 54%—an average of 61% of the grand jury over the years to 1942 being made up of representatives of the managerial-supervisory class. A. Yes.

Q. And then you take entrepreneurs and clerical, and you read the lines across, and the figures in the exhibit right in the same way show corresponding numbers of persons and percentages. Is that correct? A. Yes.

Q. And then we come to the fourth group which is marked as "Laborers" and we see that among male and female in the population there were 16,490, or 75.4% of the population; that of males in the population, there were 14,083, or 79.8%; and that of the qualified jurors, persons qualified for grand jury service, there were 9,686 from amongst that number, or 76.5% qualified. Is that right?

A. Yes.

Q. Then we carry it further and we see that in

(Testimony of Harry Tatsumi Oshima.)

1947 there are 10 such laborers on the grand jury. Is that correct? [111] A. Yes.

Q. And then in 1946, six. In 1945, ten. In 1944, fourteen. In 1943, fourteen. In 1942, sixteen. An average of 11.7% over the years from 1947 to 1942. A. Yes.

Q. And carrying it down to the next two figures, you have added together the managerial, entrepreneurial and clerical workers and done the same thing by extending the figures across the page, is that right? A. Yes.

Q. And you find that there are 4,200 male and female in the population, or 20.3% of those groups. There are 3,169 males, or 18.4%; and of qualified persons for jury duty, 2,579 or 21%. Is that right?

A. That's right.

Q. And in 1947 in the panel, we find that there is 89.1% of such persons in the panel. Is that right?

A. Yes.

Q. And then going back over the past several years, 93.2 in 1946. 89.1 in 1945. 85.7 in 1944. 84.8 in 1943. 83.3 in 1942. An average of 87.5 in the panel over the years from 1942 to 1947 from amongst the managerial, entrepreneurial or clerical groups. Is that right?

A. And clerical group.

Q. And clerical group—I so intended my question. And [112] then the last item on the page indicates that of the laborers in the population among the male and female, there were 16,490, or 79.7%

(Testimony of Harry Tatsumi Oshima.)

of males, and this whole table refers to working people—these people have income or who work. Is that correct? A. That's right.

Q. Male and female on the first item. But of the male workers in the population, there are 14,083, or 81.6%; and of those qualified for jury service on the grand jury, 9,686, or 79%. Is that right?

A. Yes.

Q. Extending it over to the panel, we find that of laborers there are 10.9% on the 1947 grand jury.

A. That's right.

Q. Going back over the years, in 1946 we found 6.8. In 1945, 10.9. In 1944—14.3. 1943—15.2. In 1942, 16.7—a total of 12.5 as an average from 1942 to 1947 of laborers on the panel. Is that right?

A. Yes.

Q. The footnotes following this, Mr. Oshima, reveal your sources and your methods of computation as on the previous tables in evidence?

A. Yes.

Mr. Resner: I should like to offer Table No. 5 in evidence, if your Honor please.

The Court: It may be marked in evidence with the same number. [113]

Mr. Resner: If your Honor please, at this time I want to repeat my offer of proof with regard to percentage of probability on the makeup of the Grand Jury as against the population characteristics of Maui on the basis of groupings according to occupations and income, and offer to prove that if

(Testimony of Harry Tatsumi Oshima.)

the Grand Jury were selected at random that the instant kind of Grand Jury, based as it is on the overwhelming majority of managerial, entrepreneurial and clerical groups as opposed to laboring groups, could happen not more than once in ten million times.

Mr. Crockett: To which offer, if the Court please, we again object.

The Court: Same ruling.

Mr. Resner: Exception, if I may.

The Court: Exception allowed.

Mr. Resner: Turn to Table 7, Mr. Oshima.

The Court: I think we will take a short recess.

(Circuit Court recessed at 2:36 p.m. and reconvened at 2:50 p.m.)

Mr. Resner: Mr. Oshima, would you turn, please, to Table 7?

Witness: Yes.

Mr. Resner: I have given Mr. Crockett a copy. I hand a copy to the Clerk to be marked for identification. [114]

The Court: Next number?

Deputy Clerk: Movants' Exhibit No. 10.

The Court: For identification.

Mr. Resner: Yes. Mr. Oshima, what is Table 10?

Witness: Table 10 attempts—

Q. No, Table 7—I am sorry—No. 10 for identification.

A. Table 7 attempts to give the number of women qualifying for the grand jury panel in Maui County

(Testimony of Harry Tatsumi Oshima.)

if the law permits it. It is an attempt to make estimates. The first line, total number of women in 1940, taken directly from the census—23,782. The next line, 21 years and over in 1940—10,224, taken directly from the census. Next, 21 years and over in 1947—11,947. The method of calculation and the sources again are mainly similar to the method and calculation as indicated in Table 1 where we estimated the number of men qualifying. The next line, Citizens 21 years and over in 1947—9,697. Number educationally qualified—first four years of schooling, 11,426; eight years of schooling, 8,490. No. 6 is the total of female employed—4,208.

Now, there is a slight—I want to call—I want to make a slight change in this table. The next line, female laborers—the word “female” should be indented so that it comes right below the word “total” above. [115] It should not have been so far out. “F” for “Female” should begin right below “T,” so that note No. 6 will cover the three categories indicated in that table at the bottom.

Q. Yes.

A. Female laborers—2,177. That is taken directly from the census for Maui. Female professional and semi-professional workers—661.

Q. Yes. Now that indicates the makeup of the population of Maui with regard to women, is that right? A. Yes.

Mr. Resner: I will offer Table No. 7 in evidence, if your Honor please.

(Testimony of Harry Tatsumi Oshima.)

The Court: What materiality has it, Mr. Resner, in view of the fact that the Congress of the United States has made the law in regard to jury service down here, and the statute simply copies the Organic Act.

Mr. Resner: Well, if your Honor please, we believe that in view of the 19th Amendment to the Constitution of the United States and also the 5th, 6th and 14th Amendments, and read in the light of *Ballard vs. United States of America*, that this is material.

The Court: I can't see, really, the materiality of the factor. It is quite possible that even were women allowed to vote that there might be a connection with sex relieving the women in that connection from [116] the duties required in the jury service, an obvious basis for distinction in requiring service. Regardless of that and in view of the fact that the Congress has seen fit not to include it in the jury qualification when it went into the matter of amendment as to voting—I can't see, frankly, the materiality of it.

Mr. Resner: Does your Honor have in mind when it was the subject of legislation by Congress, does your Honor have in mind the Organic Act?

The Court: I have in mind the Organic Act which makes the qualification of juries a male citizen. In other words, our statute is simply a copy—the Territorial statute in that qualification section is simply a copy of the Organic Act.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: Our legal point is this, if your Honor please. The Organic Act was adopted in 1903. The suffrage amendment was adopted in 1920 and superceded and controlled all prior statutes. When the suffrage amendment was adopted, all statutes that existed prior thereto which defined qualification for different kinds of activity stemming from the right of a person being an elector have to be reread, and where the word, "male" appears, it must include the word, "female."

The Court: Well, I am sorry, I can't go along with that kind of reasoning. The Act would have to be amended specifically to include that. The mere fact that a person is entitled to vote doesn't carry with it all the other obligations that a voter does have unless the Congress sees fit to impose it on us.

Mr. Resner: Also under the 5th and 6th Amendments to the Constitution of the United States as construed in *Ballard vs. United States*, No. 7 for the 1946 October Term, Mr. Justice Douglas speaking for the Court, it is held that the exclusion of women from a grand jury is a deprivation of due process of law—and the 5th and 6th Amendments are applicable to the Territory.

The Court: I don't so read the statute.

Mr. Resner: The 5th and 6th Amendments are not applicable to the Territory?

The Court: They are applicable. Don't misconstrue my statements, Mr. Resner. Your intellect jumps around the bush very fast. I said I don't

(Testimony of Harry Tatsumi Oshima.)

so construe the statute in connection with that decision that it requires ipso facto—that the amendment ipso facto carries with it an amendment of the Organic Act so that the provisions there without proper legislation by Congress can be changed.

Mr. Resner: Your Honor, I make my point because [118] obviously, among other things, we are making a record here, and the situation presented to this Court will unquestionably in one form or another be reviewed by some appellate court.

The Court: I haven't any doubt about it and it doesn't worry me one bit. I hope you do have it reviewed if it becomes a point to. The Court doesn't wish to go into the woman question because of the fact that this Court is bound by the Organic Act, and until the Organic Act is amended, this Court must abide by its terms.

Mr. Resner: All I can say is——

The Court: Does Counsel for the Prosecution desire—I don't want to forestall your rights.

Mr. Crockett: The Prosecution does not desire it, if the Court please. There is a further objection that—that none of the defendants are apparently women. The Supreme Court of the United States has held in many cases that in order to avail themselves of this particular objection that a certain class has been excluded, they have to be members of that class. In other words, there being no women defendants in this case, they are not in a position to raise the question that women have been excluded from the Grand Jury.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: The Ballard case doesn't so hold. In fact, it directly disputes Mr. Crockett's statement.

The Court: The objection is sustained.

Mr. Resner: We take an exception, if your Honor please.

The Court: Exception allowed.

Mr. Resner: And I assume the Court will take judicial notice of the fact that Counsel will stipulate that on the Grand Jury of the Territory there are no women.

The Court: I think that is obvious.

Mr. Resner: Well, I want the record to show it. I think it is obvious too, but I want nothing for granted.

The Court: The Court will make it a part of the record, Mr. Resner, that the Grand Jury as constituted here or the panel as constituted here has been an attempt to follow out that qualification at least which requires that it be composed of male citizens and that there are no female persons included on it in violation of the Organic Act.

Mr. Resner: I should like to offer to prove, then, the matters contained in Table 7, if your Honor please, with the questions and answers allowed.

The Court: The offer is dealt with in the same way as the exhibit itself. [120]

Mr. Resner: I thereupon take an exception.

The Court: Your exception is noted.

Mr. Resner: That completes the direct examination.

(Testimony of Harry Tatsumi Oshima.)

Cross-Examination

By Mr. Crockett:

Mr. Crockett: Mr. Oshima, in respect to your Table 1, the portions showing the caucasians on the jury panel, how did you determine who were caucasian and who were non caucasians?

Witness: This was determined on a special investigation conducted by myself, writing questionnaires and asking people who live on Maui what their information indicates the racial background is.

Mr. Crockett: May I have the list of the jury panel please? Showing you—this is the jury panel which has been offered in evidence as an exhibit by the Court. Will you go down the list and indicate whom you included as caucasian, beginning with the first name?—I just wonder—to save time—we have this other one. I just wonder if we should put this in the record.

Mr. Resner: I think, if your Honor please, that Mr. Oshima can use his sources which he has with him in order to answer Mr. Crockett's question. He has the results of his investigation in his hand.

The Court: He has been asked the open question— [121] which ones he characterized as caucasian.

Witness: William S. Burns—shall I read it as I go down, checking off my list?

Mr. Resner: If your Honor please, may I suggest that Mr. Oshima do it alphabetically down the list?

(Testimony of Harry Tatsumi Oshima.)

The Court: If he has his material.

Mr. Resner: If you will go down the list—A, B, C,—Mr. Oshima.

Witness: Samuel Ambrose—oh, this is for the 1947 panel?

Mr. Crockett: Just the 1947 panel.

Witness: Ray M. Allen.

The Court: Just a minute. The answers you have heretofore given, you are withdrawing that and starting over so I can——

Witness: Yes, I am starting again. Edward H. Baldwin. Richard H. Baldwin. Edward S. Bowmer. Frank W. Broadbent. Robert P. Bruce. Alfred S. Burns. Gottlieb Z. Coleman. Jack Costa. Stanley E. Elmore. Allan H. Ezell. James J. Fleming. Glenn H. Fredholm. Paul A. Haygood. Andrew Moodie. Charles E. Morris. Edmund Nunes. Winford W. Percy. Paul R. Reinhart. Louis M. Sequeira. Albert G. Simpson. Joseph H. Trask. Albert D. Waterhouse. That is all. [122]

Mr. Crockett: According to the list you have given us, Mr. Oshima, there are only 24 names in the record. Your schedule shows 28. Will you pick out the other four?

A. May I see my cards over there? I don't think this typed list is——

(Witness leaves stand to get brief case and resumes stand.)

Shall I go over the list again—faster this time? You can check it with your tabulation there. Ray

(Testimony of Harry Tatsumi Oshima.)

M. Allen. Edward H. Baldwin. Richard H. Baldwin. Edward S. Bowmer. Frank W. Broadbent. Robert P. Bruce. Alfred S. Burns. Gottlieb Z. Coleman. Jack Costa. Manuel De Ponte. E. Stanley Elmore. H. W. English. Allan H. Ezell. Manuel M. Feiteira——

The Court: Texeira?

Witness: Feiteira. James M. Fleming. Glenn H. Fredholm. Paul A. Haygood. Andrew Moodie. Charles E. Morris. Edmund Nunes. Winford W. Percy. Herbert S. Peterson. Paul R. Reinhart. Ernest Rezents. Louis M. Sequeira. Albert G. Simpson. Joseph H. Trask. Albert D. Waterhouse.

Mr. Crockett: In your Table 1, you refer to registered voters as 6,728. Is that correct?

A. Yes.

Q. And then referring to Table 3, you have a total of [123] 21,865 employed workers by major occupations.

A. That's right.

Q. That includes males and females, is that correct?

A. That's right.

Q. And then the next column, you have 17,657 including only male.

A. Yes.

Q. Now how do you explain—what is the difference between the figure 17,657 of male employed workers and the 6,728 registered voters?

A. Well, several of them—one category will be non-citizens, aliens and native Filipinos who will not come under Table 1, but will come under Table 3. Another category will be those—that number which

(Testimony of Harry Tatsumi Oshima.)

I estimate will be unable to meet the language qualification. And the third number will include those who are over 60.

Q. In other words, the 17,657 include aliens, as well as citizens. Is that correct?

A. That's right.

Q. And includes persons over 60, as well as those under?

A. Yes, that's right.

Q. And includes persons who might not meet the educational qualifications?

A. That's right.

Q. And you haven't made any table or study as to what [124] proportion of the total working population would be disqualified on account of those factors?

A. Yes, I have. If you will note on Table 3, note 2, footnote 2 after—the sentence beginning after Class 9. I am reading from there: (reading) “From these the number of these meeting the citizenship and educational qualifications are the following: In general, Class 1-4, together with foremen and own-account workers”—who are entrepreneurs—“in the other categories have about 3,748 qualifying while Class 5-12 have about 9,070 qualifying.” And I have here, “See Note 13 under Table 4.” So I will go to Table 4.

Q. How did you determine how many should be deducted in order to arrive at your figure?

A. I go to Table 4 on that point—Note 13, Table 4. Now, from Table I we obtained the other 12,821 citizens and 14,022 with four years of schooling. That is an estimate I derived from Table 1.

(Testimony of Harry Tatsuni Oshima.)

Now, if all non-laborers are assumed to be citizens—I am making a general assumption there, but assuming that professional and semi-professional workers, managerial and supervisory employees, government officials, clerical, sales and kindred workers—all of these individuals I assume to have met the qualification with respect to citizenship and education. We [125] obtained 2,387 such people whom I grant are qualified. We got 2,387. That is the total and the total indicated in the second part of Table 4 in the last column. Now that total will be deducted from the other total, 12,821 citizens, but in addition to the 2,387 we must subtract 1,364 who are from the entrepreneurial or the first part of Table 4—Note No. 4, employers and own-account workers. They are people who are qualified for jury service—namely from the viewpoint of citizenship and education. I estimate that to be 1,364. Such entrepreneurs, many of them, many of the 1,874—which is the total number of entrepreneurs—I assume, by means of certain methods derived from the Census—many of them are Japanese and a few Filipinos so that they will not qualify from the point of view of citizenship. From 1,874, 1,364 are assumed to be citizens. That plus the previous total, 2,387, minus from 12,821 citizens who are assumed to have schooling, gives us 9,070 qualified laborers. I am just reading from Note No. 13, Table 4.

Q. The percentages that you gave in the column on Table 3 saying, “After Deductions For Male

(Testimony of Harry Tatsumi Oshima.)

Non-Laborers," the percentages are based upon the totals in column 2 under the heading, "Male"?

A. May I have the question again, please?

(The question was read by the reporter.)

A. Column 3 is the panel members in 1947? I am not sure exactly—you are referring to Table 3, is that right?

Q. Yes, Table 3.

A. And column 3—panel members in 1947?

Q. No, Table 3, as I read it, you have it, "Distribution of Employed Workers by Major Occupation Group in the Population and in the Panel."

A. Yes.

Q. And then in the first two—third column.

A. Yes.

Q. You have a heading, "After Deductions for Male Non-Laborers from Classes 4-12%."

A. No, four to twelve. The percent belongs to the column—to the head of the column right below. Classes 4-12.

Q. My question is—what are those percentages based upon? That is, which figures? The one after deductions, corrections are made?

A. Yes, after the deductions are made so that they are supposed to represent, especially for Classes 5 to 12, non-laborers—they are supposed to represent laborers for Classes 5 to 12.

Q. You have a total in that column of 13,967 persons.

A. That is inclusive of Class 1 to 4, inclusive.

(Testimony of Harry Tatsumi Oshima.)

Q. Well, again, how do we account for the difference between 13,967 persons and only 6,728 voters? [127]

A. Well, as I said, the comments I just made for the previous column would be perfectly—will apply. Oh, I see what you mean. The total of 13,967 is a total that includes not only classes 5 to 12 but—the table is badly made, I must say. It will include the figures given in the third column—plus 556. Where the dash is, 556 should be there. 468 where the dash is. 681. 1,122. The reason I put a dash instead of a figure there is that that column is just for laborers, and these people are not laborers. And the total is a mistaken total—supposed to apply for all that category—each of the twelve categories.

Q. That isn't exactly what I am trying to get at, Mr. Oshima. I am trying to arrive at an understanding—that is, comparing the figure on your Table 1 where you say we have registered voters, male, 6,728, and when you say the total laborers are 13,967—does that figure 13,967 include citizens and non-citizens, or is it limited to citizens and other persons who would be otherwise qualified for jury duty?

A. No, it includes non-citizens also for that table.

Q. So then the percentages that you have set alongside there are not a fair comparison because the percentages likewise include persons who would not be qualified for jury duty. [128]

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: I object to that question as being immaterial in this sense—that this table is directed to a different proposition than the other table. The first table has reference to a cross section of the voters. This table has reference to a cross section of the community in the light of announced decisions of the Supreme Court. There are two separate tables there, two separate propositions.

The Court: Counsel is entitled to cross-examine to show the character and what the statistician is trying to testify to in this court.

Witness: May I continue that statement?

Mr. Crockett: Yes, continue the answer.

Witness: I want to clarify that. That total, 13,967, represents non-citizens and people who may not have qualification from the viewpoint of education. It will contain also native Filipinos, that 13,967—so that it is not a total of qualified people.

Q. Then my further statement was—then the percentages which are shown alongside those figures are not a true picture of the percentage of persons qualified for jury duty.

A. Those percentages are not supposed to be for qualified for jury duty. The percentages are to indicate the heading of that total.

Q. Now, where did you get your information as to the [129] occupations so as to make out the figures contained under the heading, “Panel Members in 1947” on Table 3?

A. Most of the—about 80 to 90%, estimated—

(Testimony of Harry Tatsuni Oshima.)

most of the members on the panel from, in this case 1947, practically all of them, I would say, were listed in the directory—Polks' Directory of 1939-1940 and Polks' Directory of 1940-1941 in the section, Molokai, Lanai and for Maui—Island of Maui.

Q. Do you have the name of Manuel Ferreira, Jr. on your cards?

A. I have no—Feiteria, Manuel M.

Q. Who were the two persons you listed as farmers and farm managers?

A. Ray M. Allen, manager of Wailuku Sugar Company. I have one person listed.

Q. One person, pardon me. A. 2%.

Q. Where did you list Charles E. Thompson?

A. He, according to my information, is a poultry farmer—poultry farm owner, and also a rancher. Consequently, he comes under No. 3—Class No. 3—proprietors.

Q. And you have listed as "Craftsmen, foremen and kindred workers"—who is listed under that heading?

A. Eugene K. Ayers who, according to my information, is a painter for a contractor. [130]

Q. Where did you list Mr. Anthony Tam?

A. Mr. Tam is classified in 3, proprietor—cattle raiser.

Q. Do I understand that all independent business men are included under your third classification of proprietors, managers and officials?

A. No. This table is mainly a table of occupa-

(Testimony of Harry Tatsumi Oshima.)

tional classification. Now if a person is a carpenter with a carpenter shop, he will be coming under—if he is the owner of the carpenter shop, he will be coming under Class 5—Craftsmen, foremen and kindred workers.

Q. If he is a store owner, where would he come?

A. Then he would come under 3.

Q. Where did you classify Mr. Costa?

A. Mr. Costa comes under 3—superintendent of a mill power plant from H. C. & S., my information tells me.

Q. And Mr. Ito—Roy Tatsumi Ito?

A. He comes under 4—clerical work.

Q. And Toshio Onuma?

A. He is the person who is listed for No. 9—farm laborers and farm foremen. There is one individual listed there.

Q. Farm laborer, did you say?

A. No, farm foreman. [131]

Q. Isn't the word, as a matter of fact, a research worker?

A. My information says Toshio Onuma is a luna of the harvesting department.

Q. Where did you classify Mr. Rezents?

A. Operative and kindred workers—Class 6. Locomotive fireman.

Q. And Manuel Ferreira, Jr.—do you have that name?

A. I have Feiteira—I don't have Manuel Ferreira.

(Testimony of Harry Tatsumi Oshima.)

Q. Correia.

A. Oh. He comes under—also No. 6—operatives. Carload operator—cane loader operator, I am sorry. Cane loader operator, Pioneer Mill.

Q. In regard to Table No. 5, where this second group of columns show a total of 17,657, does that figure also include persons who are not qualified under the statute to serve as jurors? A. Yes.

Q. And the percentages computed are based upon those—the total that you have in that column?

A. Yes.

Q. So that that also does not show a direct picture of the qualified persons? A. Yes.

Mr. Crockett: That is all. No further questions.

Redirect Examination

By Mr. Resner:

Mr. Resner: Mr. Oshima, with regard to the question that Counsel just asked you what is the purpose of showing that kind of comparison, Mr. Oshima?

Mr. Crockett: To which we object, if the Court please. I submit it is a question for argument rather than for the witness to show what the purpose is of——

The Court: I think we will get further to let the witness do the arguing than to have both Counsel at the present time.

Mr. Crockett: I withdraw the objection.

Witness: The purpose is not so much to give a qualified—a representation according to the quali-

(Testimony of Harry Tatsumi Oshima.)

fied population. Oh, the purpose of that column mainly was to get to the qualified—the next column there. The first column—the purpose of the first column for classification purposes was to indicate the proportion in the total employed population, Table 5. The purpose of the second column was to get at the third column—qualified.

Q. Well, the second column represents males, is that correct? A. Yes.

Q. And the third represents qualified persons in the population?

A. Males, yes. Male and other qualifications.

Q. That means qualified for jury service. It does not mean that they have all registered as voters. A. That's right.

Q. When you say qualified, you mean male, over the age of 21 and under the age of 60, possessed of the minimum educational requirement?

A. Yes.

Mr. Crockett: If the Court please, may I be permitted to ask the witness one more question regarding a figure in that column?

The Court: Counsel has opened it up, you can cross-examine.

Mr. Resner: I don't understand, your Honor. Who is supposed to ask the next question?

The Court: Are you through? I understood you were through. If you are not through, go ahead. I am not trying to cut you off.

Mr. Resner: I didn't quite understand. I think that is all, your Honor.

(Testimony of Harry Tatsumi Oshima.)

The Court: Any further recross?

Mr. Crockett: Yes, if the Court please.

Recross-Examination

By Mr. Crockett:

Mr. Crockett: Referring to—on Table 5, Mr. Oshima, you have the figure 12,669, under the heading, “Qualified.” What do you mean by that qualified? [134]

Witness: That is qualified from a viewpoint of sex, from the viewpoint of education, from the viewpoint of age.

Q. Does that include persons who are not citizens as well as persons who are citizens?

A. No—from the viewpoint of citizenship.

Q. Well, how is it that there is a discrepancy again or a difference again between the 12,669 persons there and the 6,728 persons shown as registered voters and citizens on Table 1?

A. Well, the difference is explained by the—that these figures are as of—well, supposed to be for 1947. The registered total is for 1946. Now, at the rate of about—I would estimate at the rate of about 1,000 to 2,000 qualified people can be roughly off-hand assumed to be coming of age for registration. Secondly, as you know, there are a great number of people who are qualified to register but are not registered.

Q. Isn't it a fact that so far as you know, the registered vote—well, of 1946, just about October of

(Testimony of Harry Tatsumi Oshima.)

last year, that the last registration closed? Isn't that a fact?

A. I am not sure whether it was October or the middle of 1946, but about around there.

Q. You would estimate that there is a total—a difference of 6,728 and 12,265 persons as new voters and [135] persons who have not registered to vote among the males?

A. Yes, and certain miscellaneous groups.

Q. Why is there a difference between that total, 12,265, and the total you showed on Table 3 of 13,967?

A. 13,967? You don't have in the total for Table 3, you don't have the entrepreneurial class—I mean the total for No. 5 doesn't contain the entrepreneurial—just a minute—I am sorry. As I said, the Table 3, I think—I am not—I have not made myself clear enough. That Table 3 total, 13,967, is not a total which indicates the qualified male population for jury service. That is not a total which indicates qualification.

Q. Then you say that the Table 5 total shown there is the male population qualified for jury service?

A. Yes, in the entire population.

Q. And as of what date were those figures?

A. That is supposed to be for 1947, middle of 1947.

The Court: Are you aware that the drawing of this 1947 grand jury doesn't come in 1947, but has to be published before 1947 out of 1946 activity?

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: If your Honor please, I don't think that is particularly material. What the cases say—the grand jury must be a cross section of the community [136] and a representative grand jury.

The Court: That is very true, but you are questioning a witness here on statistics who is describing statistics for the very year after the grand jury has to be drawn. I want the record to be clear on that.

Mr. Resner: If your Honor please, I think the witness has testified with regard to the percentage of error.

The Court: That doesn't meet my point. The total figures he has used for 1947 are an absurdity in view of the fact of the statutory duty that the Jury Commissioners act before 1947. I want the record to be clear upon that point, Mr. Resner.

Mr. Resner: I will take an exception to your Honor's statement in that respect, because as I read the cases in the law, what we are concerned with is that the grand jury be representative and a cross section, and if the population has not changed appreciably between 1946 and 1947, then the statistical information given is pertinent.

The Court: I think the record is pretty clear upon the point that we are driving at—that this witness is giving 1947 figures which the Jury Commission is supposed to have anticipated when they drew a jury in 1946 is the point I am making. [137]

Mr. Resner: My point is that in 1946 and 1947

(Testimony of Harry Tatsumi Oshima.)

there is no appreciable change because the population is stable.

The Court: The witness has just said he has estimated an additional number of voters coming into the picture.

Mr. Resner: Yes, but the population remains stable even though more people come of age.

The Court: I won't argue, but I want the record to be clear upon what has happened.

Mr. Crockett: We have no further cross-examination.

Re-Redirect Examination

By Mr. Resner:

Mr. Resner: Do you want to clarify that testimony, Mr. Oshima?

Witness: Yes. Let's assume that this should be brought back to 1946 according to the statement of the Judge. I would say that as far as the percentages are concerned, the effect upon the percentages which are in question, I think although the absolute total might have to be deducted for 1,000 or 2,000, as far as the relative percentages I don't think there will be any difference.

Q. On what basis do you make that statement?

A. I make that statement because it is a fair assumption that from year to year the number of ratio or [138] percentage or proportion of voters coming of age will be more or less roughly the same for these different types of categories indicted on Table 5.

(Testimony of Harry Tatsumi Oshima.)

Q. That explains your answer? That completes your answer?

A. Yes, taking into consideration the statement of the Judge—that point he made there.

Mr. Resner: That is all at this time from this witness.

(Witness excused.)

The Court: Well, it is so near four o'clock.

Mr. Resner: I wanted to recall Mr. Reinecke for questioning. It won't take more than five minutes, and he wants to return to Honolulu.

The Court: Make it speedy. The Court is closing at four o'clock. Go ahead; put him on.

JOHN E. REINECKE,

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Mr. Resner: Mr. Reinecke, did you have occasion at my request to check the composition of the current Grand Jury panel of 50 as against connections with the various firms that you mentioned about?

Witness: I have done so, yes. [139]

Q. And what does your comparison show in that regard?

A. I find out of the 50 persons, those who are owners, managers, supervisors, foremen or person-

(Testimony of John E. Reinecke.)

nel workers in the dominant firms comprise 27 persons.

Q. Out of the 50? A. Out of the 50.

Q. And you have the firms with which they are connected? A. I have.

Q. Broken down into numbers?

A. Broken down into numbers, yes.

Q. Would you give that information?

A. Bank of Hawaii, one. Baldwin Packers, Limited, two. California Packing Corporation, three, one of whom is employed also by Libby, McNeill & Libby. East Maui Irrigation Company, Limited, two—one of whom is also connected with Wailuku Sugar Company. Haleakala Ranch, Limited, one. Hana Hotel, one. Hawaiian Air Lines, one. H. C. & S.—that is Hawaiian Commercial & Sugar Company, four. Hawaiian Pineapple Company, two. Kahului Railroad Company, two. Maui Agricultural Company, Limited, four. Maui Electric Company, Limited, one. Ulupalakua Ranch, one. Von Hamm Young Company, Limited, one. And Wailuku Sugar Company, one. That is 27 without duplicates. [140]

Q. Very well. Now, Mr. Reinecke, turning to another point—with regard to the publication of "Labor in the Territory of Hawaii," year 1939, you have indicated that the pertinent portion thereof—there is part of your testimony—is pages 196 to pages 198 under the chapter 25, "The Organization of Management." Is that correct?

(Testimony of John E. Reinecke.)

A. That is correct.

Q. I show this to Counsel.

(Counsel for Movants showing to Counsel for the Prosecution.)

The Court: I think Counsel can examine that during a recess in view of the witness' answer.

Mr. Resner: All right. The volume which Mr. Crockett holds in his hand, I think is the document for which we saved number 3 for identification. I am going to file it with the Clerk.

The Court: I understand the pages you are referring to are the pages you have just now made of record.

Mr. Resner: That is correct. I am filing the whole volume for identification, having offered the entire volume, and I am also going to file with the Clerk Lind's "An Island Community," for which we saved number 4 for identification.

The Court: It may be filed for identification.

Mr. Resner: That is all, your Honor, unless there are questions. [141]

Mr. Crockett: I have no questions.

The Court: We will take our adjournment until tomorrow morning at nine o'clock.

(Second Circuit Court adjourned at 3:55 p.m.) [142]

Tuesday, September 16th, 1947—9:00 a.m.

Deputy Clerk: Criminal No. 2412—Territory of Hawaii vs. Abraham Makekau, et al., defendants.

The Court: Mr. Clerk, for the purpose of the record, I wish you would call the names of the defendants so that we can see how many of them are present. I would like to have the defendants who are called respond so that their presence can be registered.

Deputy Clerk: Diego Barbosa?

(Defendant rises.)

Deputy Clerk: John Maile?

(Defendant rises.)

Deputy Clerk: Victor Degamo?

(Defendant rises.)

Deputy Clerk: Harry Kapena Kaopuiki?

(Defendant rises.)

Deputy Clerk: Isami A. Nitta?

(Defendant rises.)

Deputy Clerk: Ah Sing Ah Ho?

(Defendant rises.)

Deputy Clerk: James Kia Aikala?

(Defendant rises.)

Deputy Clerk: Shigeru Yagi?

(Defendant rises.)

Deputy Clerk: Basiliso Arruiza?

(Defendant rises.) [143]

Deputy Clerk: Midori Oda?

(Defendant rises.)

Deputy Clerk: Shigeyuki Matsuura?
(Defendant rises.)

Deputy Clerk: Abraham Makekau?
(Defendant rises.)

Deputy Clerk: Elpidio Siruet?
(Defendant rises.)

Deputy Clerk: Mariano Baldua?
(No response.)

Deputy Clerk: Narcisso Sipe?
(Defendant rises.)

Mr. Resner: I understand, your Honor, he is the one who is ill—Baldua.

The Court: Which one?

Mrs. Bouslog: Mariano Baldua.

The Court: Let the record show that the names having been called, the rest of the persons by name have identified themselves with the exception of the one indicated as being in the hospital.

Deputy Clerk: Narcisso Sipe?
(Defendant rises.)

Deputy Clerk: And Antonio Mendes?
(Defendant rises.)

The Court: You may proceed.

Mr. Resner: I should like to offer into evidence at this time the "16th Census of the United States" for [144] 1940—"Population—Second Series—Characteristics of the Population—Hawaii."

Mr. Crockett: What particular tables?

Mr. Resner: Page 28, Table 19, at the bottom

of the page. Table 19, Page 29, at the bottom of the page. Table 21, Pages 33 and 34. And the document as a whole has information on the entire Territory, including Maui, not broken down but which is pertinent in reference to the official government report.

The Court: May the record show from whence it comes?

Mr. Resner: From the United States Government.

The Court: That is very general. The document comes here how? Out of Washington or brought here out of a local library?

Mr. Resner: No. It is a document that we ourselves obtained from the Department of Commerce.

The Court: I want the record to show that, please.

Mr. Crockett: Will the Court allow me to glance over this?

(Counsel for the Prosecution examining document.)

Mr. Crockett: If the Court please, I have no objection to the authenticity of the document. However, I submit it has no materiality in this particular [145] issue, in this case before the Court. The particular table which has been pointed out by Counsel relates to age, race and sex by counties—that is on Page 28. Also the other pages he has referred to—race, age and sex. The Constitution of the United States and the laws of the Territory spe-

cifically prohibit the Jury Commissioners from taking into consideration any matters pertaining to race in the selection of jurors. Consequently, any breaking down of the factors of the county into race, I submit if the Court please, has no bearing upon the issues before this court.

The Court: The Court can't see it at the present time, but will admit the document as part of the record for what it may be worth in the ultimate solution of the case. It may be marked the next ensuing number of the Movants.

Deputy Clerk: Movants' Exhibit No. 11 for identification.

The Court: No, in evidence.

Mr. Resner: In evidence. At this time, if your Honor please, I have offered three exhibits which are numbers 1, 3 and 4, I believe. I wanted to have the record show, your Honor, that we desire to take an exception to the Court's ruling refusing to accept into evidence or receive in evidence defendants' offered exhibits which were marked for identification 1, 2, 3 and 4.

The Court: The exceptions will be noted.

Mr. Resner: And with regard to Mr. Reinecke's testimony, if your Honor please, so the record will be clear in that regard, I desire—may I make an offer of proof on certain matters which we desire to prove which your Honor felt we couldn't.

The Court: The Court never stops Counsel from making an offer.

Mr. Resner: I wanted to be certain before I pro-

ceeded. Through the witness, Mr. Reinecke, if the questions were allowed and the answers permitted, defendants here propose to show that for some years past, for a number of years past and particularly in the years 1945, 1946 and 1947, during which period names were selected for the basis upon which the grand jury was returned, as a matter of fact back as far as 1942 through 1947, inclusive—we would show that the economy of the Territory of Hawaii is in the main owned, controlled and dominated by the firms known as “the five factors”; namely, C. Brewer and Company, Alexander & Baldwin, Castle & Cooke, American Factors, and Theodore Davies. And I would further show that the firms whose names were mentioned by Mr. Reinecke yesterday with whom are connected [147] various members of the instant Grand Jury panel in turn are in the main controlled, owned and dominated by these named “five factors.”

Mr. Crockett: We object to the offer of proof, if the Court please, as incompetent, irrelevant and immaterial. It has no bearing upon the issues of the case. The principal issue being discrimination on the part of the Jury Commissioners, there is nothing showing that the Jury Commissioners are in any way controlled or dominated by the “big five”; the other issue being where certain grand jurors are disqualified by reason of bias and prejudice, nothing showing they have any direct pecuniary interest in any of these “big five” or any person

connected with them; for the further reason that the "big five" are in no way connected with this Prosecution. The Prosecution of the Territory of Hawaii or the Grand Jury are being requested to investigate into certain occurrences which have occurred on account of which these defendants have been committed to await their action. The "big five" are in no way parties to this prosecution.

The Court: Without some preliminary showing of fact that there has been any effort or attempt upon any of the so-called "big five," using Counsel's designation, to influence or determine or coerce the [148] action of individuals upon the panel or individuals as drawn upon the jury panel, the evidence is immaterial and the Court sustains the objection.

Mr. Resner: We take an exception to the Court's ruling, your Honor.

The Court: Exception allowed.

Mr. Resner: At this time we call Judge Wirtz.

CABLE A. WIRTZ

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Cable A. Wirtz.

Mr. Resner: Judge Wirtz, you are the Judge of this district?

A. Normally, yes.

(Testimony of Cable A. Wirtz.)

Q. Circuit? A. Circuit.

Q. Will you tell us what the circuit includes?

A. The circuit includes the County of Maui—the Islands of Maui, Lanai, Molokai, Kahoolawe and Molokini.

Q. Would you say——?

A. I might say with the exception of Kalau-papa, the leper settlement on Molokai, which is a part of the [149] First Circuit by law.

Q. Will you tell us briefly what the jurisdiction of this court is?

A. The jurisdiction of this court covers that entire area.

Q. It covers that entire area geographically?

A. Geographically.

Q. And as a matter of practice—that is, cases entertained, briefly what is the jurisdiction of the court? A. You mean the type of cases?

Q. Yes.

A. All original criminal jurisdiction and all matters of felonies, appellate criminal jurisdiction and misdeameanors, original civil jurisdiction, all matters over \$500, and appellate jurisdiction over matters less than \$500 that might be instituted in the district courts.

The Court: Might I suggest to Counsel that all this stuff is in the statute—to make it a part of the Reporter's job to put into an attempted recollection by the witness is wasting the time of the Court.

(Testimony of Cable A. Wirtz.)

Mr. Resner: Merely preliminary, your Honor. Now, with regard to the selection of grand jurors to sit in the area over which this court has jurisdiction, Judge Wirtz, just what—in what manner and [150] means is the grand jury selected? That is, by whom, first?

A. Yes. The grand jury? You mean the grand jury list or the grand jury?

Q. Grand jury list.

A. The grand jury list is selected by the Jury Commission, of which I am by law *ex officio* chairman. I am required by law to appoint two jury commissioners to serve with me of different political parties. I have appointed Mr. Chatterton, representing the republican party, and Mr. Pombo, representing the democratic party, on the Jury Commission for 1946 and likewise for 1947.

We met, we had over eleven meetings between June 1, of 1946 and the end of the year when we were required to have our list in. These meetings averaged between two and a half and three hours. Questionnaires were sent out to—systematically, questionnaires were sent out to approximately 19 of our 33 eligible precincts, based upon the registered vote. These questionnaires were examined by the Jury Commission and notations made of the contents—tentative lists, qualified, questionable, and another list of those who were exempt, claimed their exemption—and from that, together with our—as far as the other precincts which were not

(Testimony of Cable A. Wirtz.)

thoroughly covered by questionnaires, based upon our personal knowledge of members of those precincts. The jury [151] was selected on the basis of representation in each precinct—at least one juror, based upon the ratio of the registered vote in that precinct, the ratio that that registered vote bears to the entire registered vote of the County. Thus some precincts, small precincts, would have only one juror; others would have as high as four or five. But every—my recollection is every precinct is represented.

Q. In the selection of this grand jury list, did you, Mr. Pombo and Mr. Chatterton participate equally and together at all times?

A. All the selection was done at the eleven meetings I have reference to in which all three of the Jury Commissioners were present and acted in concert.

Q. When was the work of collecting that list completed?

A. Roughly, sometime in December. I don't remember the exact date now.

The Court: Of what year?

Witness: Of 1946.

Mr. Resner: Now, you say that the questionnaires were sent to 19 out of 33 precincts. Was there any reason why the questionnaires were not sent to the other 14 precincts?

Witness: No. It was intended to cover them all systematically. We have old questionnaires of pre-

(Testimony of Cable A. Wirtz.)

vious [152] years, but times and conditions change; and we decided at this 1946 session that we should systematically cover every person that we knew of that might be eligible or qualified to act as a juror. And we selected the precincts to be covered systematically first as those in the outlying areas like Lanai and Molokai and part of the Lahaina section, the Hana section, and some of the upper mountainous sections where we don't have too much personal knowledge as to the citizenry. And also this—Lanai was specifically included because of the changing population. Lanai has the reputation of short-term life over there, so to speak, and the fact that the planters had recently imported a lot of Filipino laborers since the war—not that they would necessarily be eligible, because they are not citizens, but to know how many of the prior registered voters had left and been replaced.

Q. Do I understand that these 19 precincts to which the lists—or, questionnaires were sent are those areas which were outlying then and in which you didn't have too much personal knowledge?

A. That is correct.

Q. With regard to getting names from the 14 other precincts, you had personal knowledge of those precincts, is it? [153]

A. Well, we have—we took the registered voters and went through the names and picked what we thought were qualified persons, and from my personal knowledge of the voters in those precincts,

(Testimony of Cable A. Wirtz.)

plus some instances where we had questionnaires, plus the fact that some of them qualified and served in previous years to our personal knowledge who were qualified as jurors.

Q. If I gave you the precinct list, could you tell us from looking at it which were the 19 precincts that your circularized?

A. Yes, I believe I could. Mr. Bailiff, will you bring me my file there, marked "Judge"—the end one, I think it is. Maybe it is the other end.

(Bailiff handing file to witness.)

Witness (continuing): The first precinct, Lanai—Lanai City. Second precinct, Honolua.

The Court: What is that name?

Witness: Honolua. That is beyond Lahaina at the west end of the Island.

The Court: I would suggest for the purpose of the record, and my knowledge being somewhat of a stranger to your distances, and maybe Counsel also, that you give us some idea where they are with reference to where you are.

Witness: Tenth precinct, Waihee. That is just down Wailuku here—next valley—it is hard for me to describe it myself, but it is an area lying just outside Wailuku on the easterly side.

Seventeenth precinct is Keahua—maybe Mr. Bevins could help me try to explain the exact location.

Mr. Crockett: If the Court will permit me, Keahua is a village about two or three miles on the Kihei side, on the south side of Paia, lying on the

(Testimony of Cable A. Wirtz.)

road between Kahului and Makawao—a new precinct, just recently created.

Witness: The eighteenth precinct is Makawao which is above Paia, up on the mountainous area on the easterly slopes of Haleakala. Is that correct, Mr. Crockett?

Mr. Crockett: That is correct.

The Court: About 17 miles from here?

Witness: Roughly. The nineteenth precinct is Haiku, which is in the same region roughly—a little further over, towards Hana side.

Mr. Crockett: About five miles east of Makawao.

Witness: Where the marines had their encampment during the last war. The twentieth precinct is Huelo, which is again a few miles further—going down now towards Hana. Twenty-first precinct is Keanae, which is down again proceeding towards Hana—isolated because of a tortuous road, small rural settlement [155] along the way. Twenty-second precinct is Nahiku—likewise on the way to Hana. The twenty-third precinct is Hana. The twenty-fourth precinct is Kipahulu, which is just beyond Hana. And the twenty-fifth precinct is Kaupo—just at the end of the line, beyond Hana. There is no access from Kaupo except to go through Hana. There is no road entirely around Haleakala as yet, although they are working on it now. The twenty-sixth precinct is Honuaula—roughly the area around Ulupalakua—the mountainous area beyond

(Testimony of Cable A. Wirtz.)

Kula. The next is the twenty-eighth precinct which is the Kihei section—that area roughly where the plane passes in making a landing—that large open bay.

The Court: Southwest from here?

Witness: Southwest from here. The twenty-ninth precinct is Halawa which is the—would be the northerly portion of Molokai.

Mr. Crockett: The eastern end of Molokai—a small little settlement there.

Witness: That is where Mr. Fagan formerly had his ranch on Molokai. The thirtieth precinct is Pukoo—we are moving now from Halawa at the east end towards Kaunakakai.

The Court: On the Island of Molokai?

Witness: On the Island of Molokai. The thirty-first [156] precinct is roughly the center of Kaunakakai. The thirty-second is Hoolehua, which is up from Kaunakakai towards the west end of Molokai—up in the—I don't know whether it is Libbey—I guess both pineapple companies are located there, are they not, Mr. Crockett?

Mr. Crockett: That is correct.

The Court: And the thirty-third is Maunaloa, which is the west end of Molokai. The thirty-fourth precinct is Kalaupapa, the leper settlement. While they vote in this county, still this court has no jurisdiction over that precinct.

The Court: For the purpose of the record, you have been handling files which to the physical eye

(Testimony of Cable A. Wirtz.)

contain folios of documents. Do those represent the questionnaires returned in the proportionate ratio that you have testified to?

Witness: That is correct.

Mr. Resner: What do you mean by “proportionate ratio” that you testified to? I mean everybody—did you send a questionnaire to every registered voter?

Witness: Yes, sir.

Mr. Resner: Did all the registered voters return them?

A. No, they did not.

Q. A number of them did not receive them?

A. Some had moved or were in the army. Some ignored them.

Q. Now with regard to the other 14 precincts, you didn't have questionnaires from those precincts?

A. We had some accumulation scattered through the back files.

Q. From past years? A. From past years.

Q. Now, with regard to the——

A. Those, incidentally, I might state, have been sent and are in the process of being returned now and collected.

Q. You mean the other 14 precincts?

A. The other 14 precincts, so that by the time the Jury Commissioners—after we have been educated on how to proceed and deliberate, we will have questionnaires covering the entire County of Maui.

(Testimony of Cable A. Wirtz.)

Q. When do you expect the 14 to be returned, Judge Wirtz?

A. My secretary could answer that better. I don't know how fast they are coming in. They have all been sent except three, I understand.

Q. When did you start sending these questionnaires to the other 14 precincts?

A. About—roughly about two months ago we started. [158]

Q. Now, as I understand it, then, in collecting this grand jury list of 50, you used the questionnaires from the 19 precincts you have mentioned?

A. Yes.

Q. And then went through the registered voters' list on the other 14 precincts?

A. That is correct.

Q. That is, I assume there is a grand registry of voters on file here in this court house?

A. Not in the court house, but in the County Clerk's office, and we borrowed that register for our meetings.

Q. In going over the registered list of voters, was the selection made at random from that group or made from persons that the three Jury Commissioners knew?

A. No, the selection was made from those we knew were qualified.

Q. What standards of qualification did you use, Judge Wirtz?

A. The standard prescribed by the statute.

(Testimony of Cable A. Wirtz.)

Q. You mean the qualifications of a person being a male citizen, 21 years of age, three years in the Territory, having qualifications for a voter?

A. That's right.

Q. Then that he be possessed of his natural faculties, not decrepit?

A. That's right. [159]

Q. That he be intelligent and of good character?

A. Right.

Q. That he understandingly speak, read and write the English language? A. That's right.

Q. That he be summoned, returned and sworn without reference to race or place of nativity?

A. Right.

Q. Do you know how many names you went over in the grand registry, approximately?

A. I wouldn't remember the figure, but as far as the precincts where we sent out questionnaires, we went over all the questionnaires that were returned. As far as those other precincts, we went right down through the register, read the names until we decided that we had someone who was qualified.

Q. There were many among those persons whom the Jury Commissioners did not know, I assume.

A. I assume, surely. That is the purpose of sending out the system of questionnaires.

Q. And probably among the hundreds that the Jury Commissioners did not know, there were many persons qualified?

(Testimony of Cable A. Wirtz.)

A. I don't doubt that.

Q. Therefore the selection that was made by the Jury Commissioners was in the main from amongst people with [160] whom you had personal knowledge in the sense that the Jury Commissioners and yourself had contact with them in either business or a social manner.

A. Plus the fact that a lot of them had served on prior juries and some of them had full questionnaires and some of them we knew from their prior service, and the fact—I might say Mr. Pombo, I believe, was born and raised on this Island; Mr. Chatterton, a resident for over twenty years on this Island—have come in contact with quite a few people.

Q. Yes, but in the——

A. As you pointed out yesterday, Maui is a small community.

Q. Would it be correct to say, Judge, that in the main those persons who were selected from the registered list of voters by the three commissioners,—yourself ex officio, and the others who were appointed by you, were those with whom the three of you had either business or social contact or knew in that manner?

Mr. Crockett: We object to the question, if the Court please. It has been asked and answered already. The witness has already testified that——

The Court: The objection will be overruled.

Witness: But it all depends what you mean by

(Testimony of Cable A. Wirtz.)

social contacts or business contacts. There are people that we may have met socially—on a purely social basis, we may have met on a purely business basis. There are other people that we know by reputation in the community and have talked to them—maybe met them or chance acquaintances and have been able to talk with them—and others that we have observed from prior jury service.

Mr. Resner: I think there is a file containing some questionnaires on the instant Grand Jury.

Witness: Yes.

(Witness handing file to Counsel for Movants.)

Mr. Resner: I had occasion to go through this and I find that there are 20 questionnaires returned out of the 50 grand jurors on the list. That is correct, isn't it? But before we go into that, I want to point out this now to you and ask if there is not a mistake. I see the first questionnaire is from William Preston Burns—and if I could have the Court's Exhibit 2 on the names of the grand jurors, I don't believe that he is among them.

Witness: That would possibly be an error of one of the clerks.

Mr. Resner: There is a Burns on the Grand Jury.

Witness: What precinct?

Mr. Resner: But it is a different precinct.

Witness: What precinct is he listed for?

(Testimony of Cable A. Wirtz.)

Mr. Resner: I will give it to you in a minute here—Alfred S. Burns, Precinct 2. And the Burns you have there is William Preston Burns. [162]

Witness: I don't know what happened to that questionnaire. Is it in there?

Mr. Resner: Yes. You have two Burns in there.

A. Oh. Yes.

Q. So the first Burns doesn't belong?

A. He is not on the jury list. Instructions to the clerk say simply to remove from the precinct files and place in a separate file for the convenience of counsel and the parties—in the general file all of the questionnaires we have of the men listed on the grand jury and trial jury. This is obviously an error on the part of the clerks.

Q. I thought that was it. With regard to the 30 members of the grand jury first from whom you did not get questionnaires, those were the persons whose names were selected from the list of voters according to the method you have already described for us? A. That is correct.

Q. You are familiar, I take it, Judge Wirtz, with the list of registered voters as gotten out by the County Clerk's office?

A. I have never seen this list. I just had the book of registration—book with the names of the voters in it.

Mr. Resner: Are you familiar with it, Mr. Crockett?

Mr. Crockett: Yes, I am familiar with it.

(Testimony of Cable A. Wirtz.)

Mr. Resner: I might say to the Court that it is a breakdown according to registration by precincts [163] according to nationality—national origin, apparently, of registered voters, male and female. I should like to offer it in evidence because we could use it with convenience on this examination. Of course, I can call the County Clerk in to identify it. I don't suppose there is any question—it is a public record.

Mr. Crockett: The only question—we have no objection to the total, but this contains a breakdown into nationalities. I don't know on what basis it is made. That part we object to.

The Court: I think before you can use the idea of breakdown, the basis should be clear in the record—how and what standards were used—the witness here having testified that he has no access to, or that access to—

Mr. Resner: I agree, your Honor. I will have to call the County Clerk to establish that to us—merely that this is a point of order, but we can do it another way.

Now, I should like to hand you, Judge Wirtz, the Court's exhibit which is a list of the grand jurors so you will have it in front of you when we go over these names.

(Counsel for Movants handing paper to Witness.)

The first person who appears on the list is Mr. David P. Eldredge. [164]

(Testimony of Cable A. Wirtz.)

Witness: That is correct.

Q. Can you tell us how he was selected for the Grand Jury?

Mr. Crockett: To which we object, if the Court please. I submit if we are going into individual reasons why this person is selected or is not selected or some other, it is just incompetent, irrelevant and immaterial. The only question Counsel is entitled to take up at this time is if some person who was not qualified was picked or selected—to point out why a person who was not qualified was selected. The witness has already testified that the persons they selected were persons qualified for jury service.

The Court: The objection will be overruled.

Witness: David P. Eldredge served as a trial juror in 1946, along with the second on the list—Toshio Onuma. From the voir dire examination had during the trial jury, I was personally satisfied with his qualifications—plus the fact that we have a questionnaire on one Onuma. They were qualified and we saw no reason why they shouldn't serve for Lanai. They were both residents of Lanai.

Mr. Resner: You had a questionnaire on Onuma, Judge, didn't you?

A. Yes.

Q. That was returned in 1946? [165]

A. That is correct.

Q. Do you know where Mr. Eldredge is employed?

(Testimony of Cable A. Wirtz.)

A. I believe he is employed by the Hawaiian Pineapple Company.

Q. As a personnel assistant?

A. I think he is assistant in the Personnel Department.

Q. You have already told us that Toshio Onuma, who is No. 2 on the list—you had a questionnaire on him?

A. That's right.

Q. Alfred S. Burns is third on the list.

A. That is correct.

Q. And you had a questionnaire on him?

A. That's right.

Q. And he is a superintendent at Baldwin Packers, Limited and lives in Lahaina?

A. Yes, but the questionnaire shows that he is otherwise qualified.

Q. What I am—I am just trying to identify the man with the description of the man.

A. That is true. I simply want to point out that the Jury Commissioners at the time they were meeting and selecting this did not presume that there would be a pineapple strike, and consequently had no basis of presuming that anybody along—that we should exclude anybody along that line.

Q. Mr. Burns is a caucasian? [166]

A. I believe so.

Q. According to his questionnaire, of English ancestry.

A. Well, do the questionnaires call for racial extraction?

(Testimony of Cable A. Wirtz.)

Q. Yes. A. I wasn't aware of it.

Q. Nationality of father and mother.

A. Nationality.

Q. Yes, question 7, Judge.

A. Nationality.

Q. Do you distinguish between nationality and racial origin? A. Yes.

Q. Could you explain the difference?

A. Citizenship or national country—nationality. Racial ancestry would be the question—I admit that quite a few of these have indicated in their questionnaires their racial ancestry, but not called for.

Q. The expression “nationality of father”—do I understand the Jury Commissioners wanted information as to the country of which the parent was a citizen?

A. Yes, possibly to check into the first requirement of citizenship.

Q. Wouldn't that appear from question 3, in response to “Where and when born”?

A. That might. [167]

Q. And wouldn't the second question carry it on from there—“If naturalized, when and where?”

A. Yes.

Q. So between questions 3 and 4, you could determine the citizenship of any prospective juror?

A. Unless he was mistaken on a question of law.

Q. That is with regard to naturalization—assuming foreign birth? A. Yes.

Q. What would be the purpose of seeking the nationality of the father and mother?

(Testimony of Cable A. Wirtz.)

A. To determine that question—the possibility of question of citizenship.

Q. You are familiar, of course, with the requirement of the statute that the juror be selected, summoned, sworn and returned without regard to nationality? A. Without regard to race.

Q. Well, as I see it, without reference to race or place of nativity? A. That is correct.

Q. Now, with regard to Mr. Eldredge, to come back to that so we can make our record complete here—do you know that—do you know his nationality or his race, by any chance?

A. I believe he is part Portuguese, part Hawaiian—I am not positive.

The Court: Was that factor taken into consideration in selecting? [168]

Witness: No, your Honor.

Mr. Resner: Toshio Anuma is Japanese?

Witness: I assume from the name.

Q. And employed in the research department of Hawaiian Pineapple Company?

A. If that is what the questionnaire shows. I don't recall off hand.

Q. And his precinct is 1, Lanai?

A. Correct.

Q. David Eldredge is 1, Lanai?

A. Correct.

Q. Mr. Alfred S. Burns is 2, Honolulu?

A. That is correct.

Q. Now the next person who appears on the grand jury list is Manuel Correia, Jr.

(Testimony of Cable A. Wirtz.)

A. That is correct.

Q. And he is 3, Mala precinct?

A. That is correct.

Q. He is Portuguese?

A. The name would so indicate—I don't know.

Q. The questionnaire return, I believe, in his name shows that. He is a crane operator, employed by John T. Moir.

A. John T. Moir is manager of Pioneer Mill Company.

Q. Well, then that would mean that he is a crane operator at Pioneer Mill—oh, he says John T. Moir is his superior. [169]

A. Just as Mr. Moir is superior for everybody who works for Pioneer Mill Company.

Mr. Crockett: If the Court please, if Counsel is going to question on the contents of this questionnaire, it would be fair to let the witness see the questionnaire.

The Court: If the witness wants to refresh his recollection, he will ask. I think he is entitled to for that purpose.

Mr. Resner: We can stipulate to that, your Honor. The next person on the list is Roy Tatum Ito whose precinct is 3, Mala, and who is Japanese. Do you know his employment?

Witness: I don't recall.

Q. Do you know whether he was employed in the clerical department of Hawaiian Pine?

A. I don't know. I might state, as I tried to

(Testimony of Cable A. Wirtz.)

state before, that the matter of employment was never a concern to the Jury Commissioners.

Mr. Resner: I might say, your Honor, that in the light of the decisions upon which we rely and in view of the necessity of making a record which we think is a proper one, I am going into these questions at this point—that is the purpose of the examination.

The Court: I have no objection.

Mr. Resner: I wanted to have the Court and also the witness understand—I think Judge Wirtz does know it because we had discussed it at the time the [170] challenge was originally filed, and Judge Wirtz felt he should not sit in the matter since he participated in the selection of the grand jury list, although the record does show, as far as we are concerned, we were perfectly willing to have Judge Wirtz sit on this.

Witness: I might say as far as Ito is concerned, I have a recollection that he had prior jury service—a little more personal knowledge of him by virtue of the voir dire.

Mr. Resner: Edward S. Bowmer, who is No. 6—oh, Mr. Ito didn't have any questionnaire in this file?

A. I don't think so.

Q. No, it isn't in here. No. 6 is Edward S. Bowmer, for whom you have a questionnaire from December 6, 1945, and he is caucasian, is he, to your knowledge?

(Testimony of Cable A. Wirtz.)

A. My recollection of him is that he is, yes.

Q. On his questionnaire, he gives the nationality of his father and mother as English.

A. He likewise had prior jury service in the petit jury.

Q. And he is employed by Baldwin Packers, Limited, as cashier and assistant bookkeeper, according to the questionnaire.

A. If the questionnaire so states.

Q. The next is Ralph O. Cornwell whose precinct is 4, Kam 4th, Lahaina. You have a questionnaire from him [171] which is dated September 4, 1946, and he lists his place of birth as Waikapu, and nationality of father and mother is American, and his occupation during the past five years is the United States Army. Do you know Mr. Cornwell?

A. No.

Q. The eighth on the jury list is Yong Kam Chew, who gives his address as 4, Kam 4, Lahaina. I assume from that name that he is Chinese?

A. Yes.

Q. Do you know his business?

A. Yes.

Q. What is it?

A. Operates a store in Lahaina, grocery store.

Q. And you knew him from personal knowledge?

A. Yes, I was Judge when he was naturalized.

Q. The next is Ray M. Allen, No. 9. His precinct is 6, Wailuku Elementary?

A. Correct.

Q. And do you know his nationality?

(Testimony of Cable A. Wirtz.)

A. Caucasian, manager of Wailuku Sugar Company.

The Court: When you say caucasian, what various peoples conglomerated under such a name are you referring to?

Witness: I would say what the expert termed yesterday as a haole.

The Court: Irish, French, German, English——?

Witness: I really don't know. [172]

The Court: Polish?

Witness: I really don't know, but maybe Mr. Chatterton will know.

The Court: Did you go into that as a jury commissioner?

Witness: No, we did not, your Honor.

Mr. Resner: But on this question of race, the expert yesterday—that is, the description of caucasian is one with which you as a Jury Commissioner could agree—that is, as to what a caucasian and what a non-caucasian is?

A. Well, I don't know. There were two categories given. One excluded Portuguese and Spaniards and Puerto Ricans, and the other one included—so I don't know which——

Q. I think, Judge, that was the difference between a haole and a non-haole that descriptive term came in. But caucasian, generally, would include all the members of the so-called white race?

A. That is correct.

Q. And non-caucasians all others?

(Testimony of Cable A. Wirtz.)

A. That is correct.

The Court: Mr. Resner, there are some matters that Judge Wirtz of this circuit has to attend to in an official capacity and for which I am not the judge. We will taken a ten-minute recess.

(Second Circuit Court recessed at 9:56 a.m.)

(Second Circuit Court reconvened at 10:07 a.m.)

Mr. Crockett: If the Court please, before proceeding I spoke to Counsel for the Defendants just during the recess and asked whether or not it would be agreeable to break the regular order of proof and allow the Prosecution to call four witnesses whom we have subpoenaed who are working men and—not knowing how long the defense will take in the presentation of their case, I had to subpoena them to be present this morning, because in case they were needed, we didn't want to hold the Court up. Counsel informs me it will take quite a bit of time, perhaps all day and perhaps longer. One of the men is from the Island of Lanai and one from Lahaina. The other two are here in Wailuku. And if the Court would be agreeable, I would like to present these two witnesses at the present time just to testify to one particular fact, and that is the fact that their names appear on the list but they will testify to the fact that they are all members of the union—that is, the ILWU. Counsel reminded me there is more than one union, but as far as I know they are all members of the union.

(Testimony of Cable A. Wirtz.)

The Court: Perhaps Counsel is ready to stipulate.

Mr. Resner: This is the only question I had in my mind. Yesterday we asked the Court permission to examine on voir dire the members of the grand jury [174] panel and your Honor indicated you didn't think that proper. And the rule, I assume, would be consistent for both sides. That is, if we are not permitted to examine jurors on voir dire, obviously the Prosecution would not be permitted to do so either.

The Court: The question that you asked was for a general examination on voir dire. The question, as I understand, of the Counsel for the Prosecution is simply to bring out an extraneous fact that does not appear on their questionnaires as to the point that he raises—that they are, if it turns out to be, affiliated with the union. He wants that fact to appear in the record in that respect, and the only way it could be done would be by that way, unless Counsel is willing to stipulate. The general sweeping examination on voir dire that you claim the right to do is something entirely separate and distinct and will meet with an objection by the Court in a proper way.

Mr. Resner: I understand your Honor already ruled on that question.

The Court: I have already given you an advance notice of the fact that I will not permit a general fishing expedition on voir dire, but a spe-

(Testimony of Cable A. Wirtz.)

cific fact that is pertinent to the issue that you have raised on your abstract statistical data as to the situation which does not appear from the [175] questionnaires and would not appear normally in any way—that factor, as explained by Counsel, seems to me to be pertinent. I will meet any other——

Mr. Resner: Well, as long as it works both ways, I haven't any objection.

The Court: The Court isn't taking a one-sided view of this thing, Mr. Resner. As you heard me explain, the one factor that Counsel desires to produce as a matter of record in this matter is the one question as to their affiliation with unions so that it may appear that they are in that occupation and class, if it is pertinent at all. The Court hasn't ruled on that feature at all. If Counsel doesn't want to stipulate to that fact, but yet is willing that they be presented at this time out of order, that is the only thing before the Court at the present time.

Mr. Crockett: May I point out to the Court that the challenge on page 3 in the third paragraph reads: (reading) "In support of this ground of challenge defendants, and each of them, allege and assert that said grand jury and grand jury array is composed almost in its entirety of members of the employer class, and their representatives, agents and servants."

Omitting a portion—"that the said jury commission [176] have systematically, deliberately and

(Testimony of Cable A. Wirtz.)

intentionally selected and chosen members of said employer class and their representatives, agents and servants to serve thereon, and systematically, deliberately and intentionally excluded therefrom and denied membership thereon to members of the working or employee class, and members of trade unions.”

The same thing appears on page 5—that they “have systematically, deliberately and intentionally selected members of the employer class and their representatives, agents and servants to serve upon said grand jury and grand jury array, and have deliberately, systematically and intentionally excluded therefrom members of the working or employee class, and trade unionists.”

So that I submit, if the Court please, in so far as this issue is concerned, the Prosecution is certainly entitled to show that specific persons were included on this list who are, in fact, members of the trade unions.

Mr. Resner: All I had in mind, Judge, is that one of the reasons for which we wanted to call members of the Grand Jury on voir dire was to show their identification with the so-called employer class, their nationality, things of that character which we believe are pertinent in view of Supreme Court decisions on those questions. Now it was on [177] that proposition that I understood your Honor yesterday to rule or to indicate that we could not be permitted to call them, as well as on the other side of

(Testimony of Cable A. Wirtz.)

the question, whether we could examine them for cause on the basis of bias.

The Court: I think there is either a conscious or unconscious misunderstanding being expressed in the record here. The Court's intention—if the Court didn't properly explain, I will try to do it now—is to say to you that a general, open examination on voir dire on questions of unalleged fact of bias and prejudice, that is, only alleged by judicial conclusion, the Court is not inclined at this time to permit. But I did say that in connection with the identification of these persons, it was the Court's information, by the system known by the Court, that questionnaires went out—and other factors of official record are available to the knowledge of the Jury Commission which would disclose the identity of the persons from the standpoint that you are going on; and if not, the Court will take that question up if the factor is necessary to be proved. This particular factor is simply a question, Counsel has said, that goes to that issue which you have raised in your pleading.

Mr. Resner: We have no objection to these witnesses being heard any time, whether in order or out of order. We have no objection. [178]

The Court: Then, Judge Wirtz, will you step down a minute and let's call out of order.

(Witness excused.)

ROY TATSUMI ITO,

having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please give your full name?

Witness: Roy Tatsumi Ito.

Mr. Crockett: Where do you live, Mr. Ito?

A. Lanai.

Q. What is your occupation?

A. Assistant research.

Q. How long have you lived at Lanai?

A. Oh, over two years.

Q. And before that, where did you live?

A. Lahaina.

Q. How long have you been engaged as an assistant research?

A. About over one year.

Q. And what was your occupation before that?

A. I was checker. Before that, I was hired there first as a laborer.

Q. During the year 1946, were you a member of a labor union? A. 1946? Yes.

Q. And are you a member of a labor union at the present time? [179] A. I think so.

Q. What labor union are you a member of?

A. ILWU.

Q. Which particular local? A. Local 152.

Q. Where does that have its headquarters? Or principal office? A. At Honolulu.

(Testimony of Roy Tatsumi Ito.)

Q. At Honolulu. Do you know whether or not you are the same Roy Tatsumi Ito that was included on the list of the Grand Jury? A. Yes.

Mr. Crockett: You are the same. You may cross-examine, Mr. Resner.

Cross-Examination

By Mr. Resner:

Q. How long have you been on the Grand Jury list, Mr. Ito?

Witness: The first questionnaire was sent to me around 1945.

Q. How long have you been serving, however?

A. I didn't serve on the jury. I just filled in the questionnaire.

Q. What was that again?

A. They sent in a questionnaire. I just filled the questionnaire.

Q. But you never served, is that the point? [180]

A. I never served.

Q. How long have you been on the list—did you ever get notified that you were on the list?

A. In 1945 I sent a questionnaire and in 1946, but I wasn't in the jury.

Q. The question I am getting at is did anyone ever notify you that you were a member of the Grand Jury panel or list?

A. Nobody notified me, but came in the newspaper—my name.

Q. Had you ever been called to court and sworn in to serve as a grand juror? A. No.

(Testimony of Roy Tatsumi Ito.)

Q. Are you a member of the ILWU, 152, at the present time?

A. I paid my dues until August, but I don't know if after that—I didn't pay yet.

Q. August of what year? A. This year.

Q. Have you paid them since?

A. Just September—I didn't pay September yet.

Q. But you were a member until August, 1947?

A. Yes.

Q. And you are employed as an assistant research worker at Hawaiian Pine at Lanai?

A. Yes.

Mr. Resner: Thank you, that is all.

(Witness excused.) [181]

CHARLES H. SAKA,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Will you please state your name?

Witness: Charles H. Saka.

Mr. Crockett: Where do you live, Mr. Saka?

Witness: Wailuku.

Q. What is your occupation?

A. Clerk at the warehouse of the Wailuku Sugar Company.

Q. How long have you lived in Wailuku?

(Testimony of Charles H. Saka.)

A. Approximately four years.

Q. And how long have you been working with the Wailuku Sugar Company?

A. Eighteen years.

Q. And in the present job, how long have you stayed? A. Same job.

Q. Are you a member of any union?

A. I am.

Q. What union are you a member of?

A. ILWU.

Q. What local? A. Local 144.

Q. Where does it have its office?

A. Wailuku.

Q. Are you an officer of the union? [182]

A. Yes, sir.

Q. What office do you hold?

A. Secretary of Unit 3.

Q. Are you the same Charles Saka whose name appeared on the list of the grand jurors returned in this court, do you know? A. I presume so.

Q. Did you see your name published in the paper? A. I did, sir.

Q. And so far as you know, you are the only Charles Saka by that name here? A. Yes, sir.

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Have you ever been called and sworn in as a grand juror? A. No, sir.

Q. When did you see in the paper that you were on the list?

(Testimony of Charles H. Saka.)

A. I think on the early part of this year, but I seen it once in the Maui News—I don't recall what issue it was.

Q. Did you ever get one of these questionnaires that has been talked about? A. Yes, sir.

Q. You did get one? [183] A. I did.

Q. When was that?

A. Sometime last year.

Mr. Resner: That is all.

(Witness excused.)

ERNEST REZENTS,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Ernest Rezents.

Mr. Crockett: Where do you live, Mr. Rezents?

Witness: Wailuku.

Q. How long have you lived in Wailuku?

A. Ten months—ten years and nine months.

Q. Where did you live before that?

A. Kahului.

Q. What is your occupation?

A. Locomotive fireman.

Q. By whom are you employed?

A. Wailuku Sugar Company.

(Testimony of Ernest Rezents.)

Q. How long have you been employed in that occupation? A. Same time.

Q. Are you a member of a labor union?

A. Yes.

Q. And what union are you a member of?

A. ILWU. [184]

Q. What local is that? A. 144.

Q. That is the one having its office here in Wailuku? A. Yes.

Q. How long have you been a member?

A. About three years.

Q. Do you know whether you are the same Rezents whose name appears in the grand jury list?

A. I am.

Q. You saw your name in the paper also?

(Witness nodding.)

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Have you ever served as a grand juror, Mr. Rezents?

Witness: Yes, I did.

Q. In what year?

A. About three years ago, I think it was.

Q. Did you serve on the present list—this year, 1947? A. No.

Q. Have you ever been called or sworn in this year? A. No.

Mr. Resner: That is all.

The Court: The Court would like to ask a ques-

(Testimony of Ernest Rezens.)

tion. Was there any question on the questionnaire you got seeking to get any information out of you as to whether [185] you were or were not a union man? On the questionnaire, did it ask any such question?

Witness: No.

Mr. Resner: Were you asked the question of your union affiliation at any time, Mr. Rezens, in connection with your service?

Witness: Yes. I would say about two weeks ago a policeman was up my place and asked me if I was a member of the union.

Q. Did he say whether he came to ask you that?

A. He said that he thinks that there would be some cases coming out and he wanted to know if I was in the union or not.

Q. Do you know who that officer was?

A. Yes.

Q. Who was it?

A. I think Viela.

Mr. Resner: That is all.

The Court: Just a minute. Since my question has opened up the subject, I would like to ask another. Were you asked any question of your union affiliation before your name appeared in the paper in the grand jury list?

Witness: Before? No.

The Court: That is all.

Mr. Crockett: That is all.

(Witness excused.) [186]

MANUEL CORREIA, JR.

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Manuel Correia, Jr.

Mr. Crockett: Where do you live, Mr. Correia?

Witness: Puukolii, Lahaina.

Q. And what is your occupation?

A. Crane operator.

Q. How long have you lived in Puukolii?

A. Thirty years.

Q. And how long have you been in the work of crane operator? A. Fifteen years.

Q. Are you a member of any union?

A. ILWU.

Q. How long have you been a member of the union? A. Two years.

Q. And are you a member at the present time?

A. Yes.

Q. Are you the same Manuel Correia, Jr. whose name appeared in the jury list—I believe the list was published in the newspaper. A. Yes.

Q. Have you ever served on a jury before?

A. Yes, I did. [187]

Q. When was that?

A. About five years ago.

Q. Do you recall whether it was the grand jury or trial jury? A. Trial.

Mr. Crockett: Trial jury. That is all.

(Testimony of Manuel Correia, Jr.)

Cross-Examination

By Mr. Resner:

Q. Have you ever been called and sworn in on the present grand jury panel of 1947, Mr. Correia?

Witness: No.

Q. Have you ever served as a grand juror?

A. No.

Mr. Resner: That is all.

(Witness excused.)

Mr. Crockett: If the Court please, those are the four witnesses which I wished to present.

The Court: All right, Judge Wirtz.

CABLE A. WIRTZ

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Mr. Crockett: At this time, if the Court please, I ask that the witnesses be instructed they are excused.

The Court: No further use? The witnesses may be excused from any further responsibility to the subpoena. [188]

Mr. Resner: No. 9 on the list of grand jurors, Judge Wirtz, is Ray M. Allen, whose precinct resi-

(Testimony of Cable H. Wirtz.)

dence is 6, Wailuku Elementary. That is correct, is it not?

Witness: That's right.

Q. Is that correct? A. Yes.

Q. Incidentally, I think I made an error. Mr. Yong Kam Chew—I want to correct it in the record. I think his residence is 4, Kam 4th, Lahaina.

A. I would like to state that it might be somewhat deceiving on these precincts. Some persons are registered in one precinct and live in another.

Q. Can they vote in the precinct?

A. They generally return and vote in the precinct in which they are registered. Some of them have never bothered to change their registration from precinct to precinct.

Q. In the Court's exhibit 1 is listed the names of these grand jurors with the words, "Precinct Residence" used. I assume that means the place of voting?

A. That is the precinct under which they are registered—taken from the register of the Clerk.

Q. Do you know Mr. Allen's business?

A. Yes.

Q. What is it?

A. Manager of Wailuku Sugar Company.

Q. And his race? [189] A. White.

Q. Next is Wai Ken Tom, No. 10—Precinct residence, 6, Wailuku Elementary. I assume he is Chinese? A. I would presume so.

Q. Do you know his business?

(Testimony of Cable H. Wirtz.)

A. No, I do not.

Q. Do you know whether he is a bookkeeper at the Maui Telephone System?

A. I couldn't say.

Q. Next is Mr. Allan H. Ezell. He is No. 11. His precinct residence is 6, Wailuku Elementary. Do you know his race?

A. White.

Q. And his occupation?

A. I am not sure whether he is manager of the airport or—he is some managerial capacity with the Hawaiian Air Lines.

Q. District Manager of Hawaiian Air Lines?

A. That may be it.

Q. Next, No. 12 is—do you know Mr. Ezell personally, Judge?

A. Yes.

Q. And I assume you know Mr. Allen personally?

A. Yes.

Q. Of the previous ten names we have read, how many of them do you know personally?

A. I know Mr. Eldredge. I have met Mr. Bowmer. I [190] know Yong Kam Chew, Mr. Allen, Mr. Ezell.

Q. No. 12 is Louis Sequeira—7, Iao School. What is his race?

A. I am not certain of that. The name might indicate Spanish or a mixture of Spanish races.

D. Do you know his occupation?

A. I am not positive about that either. I think he works for Wailuku Sugar. I may be wrong on that.

(Testimony of Cable H. Wirtz.)

Q. Do you know whether he is in the accessory and parts department—manager of that at Von Hamm Young? A. No, I am not positive.

Q. Do you know him??

A. I believe there are several Sequeira brothers. I don't know which one I have met and talked to.

Q. No. 13 is Winford W. Percy, 7, Iao School. Do you know Mr. Percy? A. Yes.

Q. And what is his occupation? A. White.

Q. His race is white and what is his occupation?

A. He operates a Wailuku appliance store. I think it is called Maui Appliance Company down on Market St.

Q. Here in Wailuku? A. That is correct.

Q. Next is No. 14, Shosaku Nakamoto—7, Iao School. His nationality or his race is Japanese, I assume?

A. Not knowing anything further, that is what I would assume too. [191]

Q. Do you know his occupation? A. No.

Q. My information says he is the manager of the Olympic Market. Do you have any information in that regard?

A. I wouldn't be positive.

Q. Next is No. 15, Irving Maeda—8, Piihana. Do you know his nationality and occupation, Judge?

A. I am not positive, but I would assume from the name that his nationality is Japanese.

Q. And his occupation is unknown to you?

(Testimony of Cable H. Wirtz.)

A. No, I don't know. There are also a lot of Maedas on Maui. I might have met him. I am not sure.

Q. He is a public accountant. You don't know that?

A. I believe there is a maeda that I have met who is a public accountant. This may be the same one.

Q. No. 16 is Joseph H. Trask—8, Piihana. Do you know him? A. Yes.

Q. His race? A. White.

Q. Business?

A. I believe he is manager of a branch of the Bank of Hawaii.

Q. No. 17 is Ernest Rezents. He was the gentleman who was just here and he described himself. Do you know him? A. No, I don't. [192]

Q. I think the record shows that he is white and employed as a fireman. No. 18 is Eugene K. Ayers—9, Papohaku. Do you know him? A. No.

Q. Do you know his nationality or his occupation?

A. That I couldn't be positive about. He has an English name, but it might—my recollection in meeting with the Jury Commissioners—he might have been described as having some Hawaiian blood in him. I am not sure.

Q. I think the questionnaire shows that he says English-Hawaiian, and his occupation, freight clerk, Naval Freight Office.

(Testimony of Cable H. Wirtz.)

A. Well, I don't know the name of the freight office operating now. He was at that time.

Q. No. 19 is Mr. Paul A. Haygood—9, Papohaku. Do you know Mr. Haygood? A. Yes.

Q. What is his race and occupation?

A. He is white and I don't know whether he is manager of the Coca-Cola Bottling Company or the local soda works that markets coca-cola.

Q. No. 20 is Charles H. Saka who was just here. Do you know him?

A. Yes. I didn't know him, but we knew of him—know of his affiliation.

Q. It appears that he is Japanese and employed, I [193] believe, as a clerk with the Wailuku Sugar Company.

A. We knew of his affiliation with the union at the time the Jury Commissioners met.

Q. That he was affiliated with the ILWU.

A. Yes.

Q. You mean he was a union man?

A. We knew of that because he has been quite active—and things that you know in the community.

Q. His address is 10—. A. Waihee.

Q. Waihee. No. 21 is Glenn H. Fredholm whose address is 12, Kahului. Do you know him?

A. No.

Q. Do you know his nationality or race and occupation?

A. I think he is of the white race—I couldn't be positive though. So often those who have white names are a mixture of races in the Islands.

(Testimony of Cable H. Wirtz.)

Q. The information I have—he is haole, employed as superintendent with the truck department of the Kahului Railroad Company. Could that be correct, so far as you know?

A. I think he is employed by Kahului Railroad Company—in what capacity, I do not know.

Q. No. 23 is—No. 22, rather, is H. S. Peterson whose address is 12, Kahului. Do you know Mr. Peterson? A. Yes.

Q. And his race and occupation? [194]

A. White—manager of Puunene Store.

Q. Do you know whether that store is privately owned by one of the companies?

A. I think it is operated as an outlet for Kahului Store—I don't know the tie-up.

Q. No. 23 is Manuel De Ponte—spelled D-e on my list. A. D-u.

Q. And his address is 12, Kahului. Do you know him?

A. There are quite a few Du Pontes on the Island. I couldn't be positive I know this particular one. I have met several.

Q. He is caucasian?

A. Well, I can't be sure. Yes, I think he is Portuguese.

Q. And his occupation is assistant personnel director of the Kahului Railroad Company?

A. I don't know. I am not sure of that.

Q. No. 24 is Frank W. Broadbent—13, Puunene. Do you know Mr. Broadbent? A. Yes.

(Testimony of Cable H. Wirtz.)

Q. And his race and business?

A. White and he is one of the assistant managers, I believe of Hawaiian Commercial and Sugar Company.

Q. No. 25 is Masao Mac Ajifu whose address is—13, Puunene. You know him?

A. At the time the Jury Commissioners met, I didn't. But [195] I have met him because he was drawn and selected for the Grand Jury and was excused by myself. He failed to appear and had to be summoned on a bench warrant, but he is a World War II veteran and has a mental disability which we didn't know of at the time. At the time he left to serve his country, he was in good shape.

Q. Is he employed anywhere now?

A. That I can't say. All I know at the time I excused him the first part of this year, he had a mental disability and was receiving benefits from the federal government.

Q. Do you know his race? A. Japanese.

Q. No. 26 is Mau Hin Edward Alu—13, Puunene. Do you know him? A. No, I do not.

Q. And his race and occupation?

A. That name could be quite a combination. It might be Chinese-Hawaiian. I suspect it to be Chinese-Hawaiian.

Q. Our information is that that is correct—so probably so. He is employed, according to our information, as a machinist journeyman at Hawai-

(Testimony of Cable H. Wirtz.)

ian Commercial and Sugar Company. You don't know whether that is so or not?

A. I don't know.

Q. No. 27 is Jack Costa whose address is Puunene. Do [196] you know Mr. Costa?

A. Yes.

Q. And his race and business?

A. White—I am not sure whether he is retired at the present time or not, but he was employed in some capacity with Hawaiian Commercial and Sugar.

Q. Yes, our observation is he is superintendent at H. C. & S. mill power plant—does that correspond with your knowledge?

A. I didn't know the capacity, but I knew that he was employed by H. C. & S.

Q. No. 28 is James M. Fleming—13, Puunene. Do you know Mr. Fleming?

A. Yes.

Q. And his race and occupation?

A. White and Island manager of the Shell Oil Company.

Q. No. 29 is E. Stanley Elmore—14, Spreckelsville. You know Mr. Elmore?

A. Yes. And this is an illustration I might give you right now. He is registered in Precinct 14, Spreckelsville and was a victim of the tidal wave and has since moved to Kula. His house was destroyed and apparently—I don't know whether he has re-registered or not, but at the time we picked the Grand Jury, he was registered at Spreckelsville.

(Testimony of Cable H. Wirtz.)

Q. And what is his race and occupation?

A. White and manager of Valley Isle Motors, Limited. [197]

Q. No. 30 is Albert D. Waterhouse—15, Lower Paia. Do you know Mr. Waterhouse?

A. Yes.

Q. His race and occupation?

A. White, and I don't know in what capacity but he is employed by Maui Agricultural Company.

Q. Would he be the irrigation superintendent at Maui Agricultural?

A. He might, but I am not positive.

Q. Next is 31, Manuel Feiteira—15, Lower Paia. Do you know him? A. No.

Q. And his race and occupation?

A. I would assume white—occupation, I have no knowledge.

Q. We have that he is a head time keeper at Maui Agricultural Company.

A. I have no way of knowing.

Q. No. 32 is Andrew Moodie—16, Upper Paia. Do you know him? A. Yes.

Q. And his race and occupation?

A. White and manager of Paia Store in Paia.

Q. No. 33 is Robert P. Bruce—16, Upper Paia. Do you know him? A. Yes.

Q. His race and occupation?

A. White and manager of East Maui Irrigation Company. [198]

Q. No. 34 is H. W. English—16, Upper Paia. Do you know Mr. English? A. No, I do not.

(Testimony of Cable H. Wirtz.)

Q. Do you know anything about him? His race or occupation?

A. No present recollection. Of course on all these, I might have some recollection if it appears on the questionnaires, but I have no recollection at this time.

Q. Apparently he never received a questionnaire, according to the information we have here. That is, he is white and supervisor of the Maui Agricultural garage—and manager of the Maui Amusement Theatre at the present time.

A. That may well be. I can't be positive about it.

Q. No. 35 is Gottlieb Z. Coleman—16, Upper Paia. Do you know Mr. Coleman?

A. No, not personally.

Q. And you don't know his occupation?

A. No.

Q. The information we have is that he is a white person and that he is the floor department head of the trucking department of the Maui Agricultural Company. You don't know? A. I don't know.

Q. No. 36 is Edmund Nunes—17, Upper Paia. Do you know him? [199]

A. No, although it is possible I might. There are a lot of Nunes on the Island. I might have met him.

Q. He gives his apparent nationality as Portuguese and his occupation as district overseer for Maui County.

(Testimony of Cable H. Wirtz.)

A. That is quite possible.

Q. Let me ask you this question—where a person would give his parents' nationality, did that mean that such person is considered by himself and others as Portuguese as something different in the community than an ordinary caucasian?

A. As a matter of fact, I don't think we ever took into consideration these racial questions. We looked purely to the qualification of the juror.

Q. Is there any particular reason why in the public records in the County a person should be identified as a Portuguese rather than as a caucasian?

A. I believe there is something on that, I am not positive. But there are some organizations where some persons are qualified Portuguese in the non-caucasian category. I believe your expert mentioned that yesterday.

Q. He said it is a part of the mores of the Territory that they were regarded separately under some circumstances.

A. Yes, but I don't know what the basis is or the reason.

Q. Probably has some historical origin, would you say so, Judge? [200]

Witness: I won't venture.

Q. The next, No. 37, Mr. Richard H. Baldwin—18, Makawao. Do you know Mr. Richard Baldwin?

A. Yes.

Q. And his nationality or his race and occupation?

(Testimony of Cable H. Wirtz.)

A. White, and I believe he is the manager or assistant manager of Haleakala Ranch.

Q. Yes. No. 38, Anthony A. Tam—18, Makawao. Do you know him?

A. Only through knowledge of his appearance in court as a trial juror.

Q. He is Chinese? A. Yes, I would——

Q. And a farmer?

A. That is what I understand—or private rancher or small farmer or truck farmer of some sort.

Q. No. 39 is Walter W. Holt—19, Haiku?

A. Yes.

Q. Do you know him? A. Yes.

Q. His race and occupation?

A. He is part-Hawaiian—I don't know what the other racial extraction would be.

Q. Is he an American-Hawaiian? Would that be a description?

A. Yes. And he is connected with the Board of Forestry and Agriculture in some capacity, I am not sure just which. [201]

Q. No. 40 is Edwin K. Muroki—19, Haiku. Do you know him? A. No, I do not.

Q. He is Japanese.

A. I would assume so from the name.

Q. Our information is that he is a storekeeper at Libby, McNeill & Libby. You wouldn't know?

A. I wouldn't know.

Q. I think that is what he says on his question-

(Testimony of Cable H. Wirtz.)

aire. He is one of those who has returned one. Storekeeper, Libby, McNeill & Libby. No. 41 is Mr. John Plunkett—21, Keanae. Do you know him?

A. Well, he ran for office at the last election and I saw him on the platform. I don't know him personally.

Q. He is Irish-Hawaiian?

A. That I don't know.

Q. According to his questionnaire.

A. I would say that he is a mixture.

Q. Foreman with East Maui Irrigation Company.

A. I wouldn't be positive of that.

Q. So he states.

A. Well, I am testifying from personal recollection.

Q. I understand you are, Judge. No. 42 is Mr. Albert G. Simpson—23, Hana. Do you know Mr. Simpson?

A. I think that is the Simpson that is known as Colonel [202] Simpson who runs the Hana Ranch.

Q. That's right. He is white? A. Yes.

Q. And he is the vice-president of Hana Ranch and the representative of the Irwin estate in the Territory?

A. I don't know those affiliations. All I know is that he appears to be running the Hana Ranch and is Mr. Fagan's representative in the Island.

Q. So Colonel Simpson states in the questionnaire—the information I have just asked you about.

(Testimony of Cable H. Wirtz.)

No. 43 is Edward H. Baldwin—26, Honuaula. Do you know Mr. Edward Baldwin?

A. Yes.

Q. And race and occupation?

A. White ,and I believe manager of Ulupalakua Ranch.

Q. Is that a different ranch from the other Baldwin or the same one?

A. No, two separate ranches, and incidentally your expert yesterday missed the third ranch—Mr. Harold Rice's ranch between the two of them.

Q. What is the name of that ranch?

A. It has a Hawaiian name, I can't recall right now, but quite a sizeable ranch.

Q. No. 44 is Henry S. S. Fong—27, Keokea. Do you know him? [203]

A. Yes.

Q. And his race and occupation?

A. He appears to be full blooded-Chinese. He runs a movie house and store at Keokea, Kula—in the vicinity of Kula Sanatorium, and I understand he is now engaged in some contracting work. And I think he has several enterprises down here in Wailuku stores of various types.

Q. No. 45 is Charles Goodness—27, Keokea. Do you know him?

A. Yes.

Q. His race and occupation?

A. He appears to be full blooded Hawaiian. I don't know what his occupation is. He recently had an unfortunate accident and had his arm blown off—dynamite fixing—and I don't know whether he is employed at the present time.

(Testimony of Cable H. Wirtz.)

Q. No. 47 is Charles E. Thompson—28, Kihei. Do you know his race and occupation?

A. I am not positive about his race. I think he is a mixture there.

Q. German-English-Hawaiian, according to his questionnaire, Judge.

A. That would probably be right. He runs some sort of a farm or small ranch down at Kihei.

Q. No. 47 is Stanley C. Friel—30, Pukoo. Do you know Mr. Friel? [204]

A. I am not positive. There are a lot of Friels in the Islands. I have met a lot of them, but I can't say I know this one positively.

Q. He states he is caucasian-Hawaiian and a foreman at the United States Engineers Office. You don't know that? A. No.

Q. No. 48 is Charles E. Morris—31, Kaunakakai. Do you know Mr. Morris? A. Yes.

Q. Well, tell me about his race.

A. He is white and to the best of my knowledge he runs an open house movie theatre in Kaunakakai.

Q. No. 49 is Kenneth Auld—32, Hoolehua. Do you know Mr. Auld? A. Yes.

Q. And his race and occupation?

A. I suspect Scotch-Hawaiian. And he is employed—I don't know whether it is at Libby or the other pineapple company over on Molokai—but in what capacity, I am not sure.

Q. California Packing section superintendent, according to his questionnaire.

(Testimony of Cable H. Wirtz.)

A. Yes, probably it.

Q. Born in Honolulu and he states the nationality of his father and mother as part Hawaiian. No. 50 is Paul R. Reinhart—30, Maunaloa. Do you know him? [205]

A. No, but I do know—have found out since he has never qualified for this Grand Jury, having desired to be excused for business reasons—that he is in some sort of a supervisory capacity with—Well, it may be Libby or the other one—one of those two pineapple companies over on Molokai.

Q. He says he is assistant superintendent of Libby, McNeill & Libby.

A. Despite two sessions of the Grand Jury, he requested an excuse and has been excused. He has never qualified.

Q. He gives his nationality as German.

A. The name would appear so.

Q. You mentioned two sessions of the Grand Jury, Judge. Have there been two terms this year?

A. No, it is all in the same term, but we had a session, I believe, in March some time. That was the original session of the Grand Jury. And then there was a second one just recently on the occasion of this challenge that was presented—at which time, on the basis of the challenge the cases involved were withdrawn from consideration of the Grand Jury.

Mr. Resner: At this time, if your Honor please, I would like to put in evidence the form of the questionnaire used.

(Testimony of Cable H. Wirtz.)

The Court: It may be received and marked the next number.

Mr. Resner: Judge, with regard to the qualifications [206] of jurors, the requirement that a person can understandably read, speak and write the English language, what standard did the Jury Commissioners use in finding out whether a person could or could not meet that requirement?

Witness: It is hard to establish any arbitrary standard. I have had personal experience with people, especially here in the Islands where there are different racial groups, who have a very good education—even going as high as partially through college—return to their home environment and in four or five years, they might not even qualify. But, on the other hand, there are a lot of persons who may not have had any education at all or very little who have helped themselves along as life goes on and can certainly qualify.

Q. What does that mean to you as a Jury Commissioner—understandably speak, read and write the English language?

A. Well, of course some of the attorneys may not agree. From the questions they ask them on voir dire, it would seem that the attorneys require a L. L. B. degree—especially when they ask them to define reasonable doubt and certain of the other pertinent facts. I would think the equivalent of an 8th grade education. By equivalent, that doesn't mean actually eight grades, but the equivalent. It

(Testimony of Cable H. Wirtz.)

may mean anywhere from one, providing he has done something. [207]

Q. In other words, a person could go as far as the fourth grade and still have an understandable knowledge, according to your understanding?

A. That is correct.

Q. When you went over all these names and came out with these 50 names on the list, how did you determine whether these 50 could understandably meet the requirement we are just talking about?

A. I might explain that—taking precinct 1 as an illustration, we got the questionnaires together and after they were read and discussed by the Commissioners, we set forth tentative lists of qualified persons and questionable. In other words, there were some that might or might not qualify, depending upon future investigation—and others that were exempt or some others that clearly appeared not to have the educational standards and who themselves stated in their questionnaires that they didn't think they were intelligent enough and they had maybe a first or second grade education, and we put them on that list. However, these are all lists that are designed—and also we had those who were out of the jurisdiction and some of those who were temporarily out and those who were deceased and the questionnaires not received. The purpose of this list is to get an available jury. Nobody has definitely or was definitely rejected. As you well know,

(Testimony of Cable H. Wirtz.)

anybody who may not be qualified today may be qualified tomorrow—a felon may be pardoned by the [208] Governor. If he has the qualifications, he is automatically qualified for jury service. A person who doesn't have, may not have the equivalent of the knowledge for reading, writing and speaking the English language, may better himself so that from time to time these categories change. The first thing the Commissioners will do is to review the present tentative list.

Q. Let me ask you this—on this understandably reading, speaking and writing English, if a person returned a questionnaire and said, “I don't think I have got enough education”—as I have looked through a number of these questionnaires, I saw that to be the statement of persons made—would you take their word for it, or would you find out for yourself?

A. We have temporarily put them on the last list. Sometimes we question them and put them on the questionable list. It is subject to review. We can't do everything at once.

The Court: We will take a recess.

(Second Circuit Court recessed at 11:05 and reconvened at 11:15 a.m.)

Witness: I should like permission to amplify my last answer—the question having to do with the understandably reading, writing the English language. That is this—as far as the Grand Jury is concerned, [209] the Commissioners endeavor in so

(Testimony of Cable H. Wirtz.)

far as humanly possible to make sure that they do qualify fully. Of course, we don't always succeed. As I pointed out in the case of this Japanese boy, Ajifu, he has the high school education, but due to the fact that he was struck by a shell on the head at Anzio, he no longer can speak or read or write the English language coherently. That appeared when he actually came to court. This is done for the reason that as far as the Grand Jury is concerned we don't normally have the extra-sweeping process of examination on voir dire that occurs with every trial jury.

Mr. Resner: So at least, to sum it up, so far as the person setting forth his own qualifications, if he deems himself disqualified at this stage of your selection of grand jurors, you put him to one side rather than call him in and investigate him on educational requirements.

A. We intend to investigate him at some future time. In some of the smaller precincts where we have a dearth of voters and some—nearly all of them claiming disqualification for that reason, we may have to call them in immediately in order to get a grand juror or trial juror. We haven't as yet had to do that.

I might state for the benefit of Counsel that as I stated before no one has definitely been excluded from jury service on account of the reading, writing and speaking requirement, and to my knowledge no one [210] that was under consideration by the Jury

(Testimony of Cable H. Wirtz.)

Commissioners for either the Grand or trial jury was excluded for that reason.

Q. Judge Wirtz, the requirement of a person being intelligent and of good character, what standards, if any, did you set up on that qualification?

A. Well, that is—well, in addition to the reading and writing—I suppose we have to be able to comprehend what is going on. Intelligence allows you to coordinate what you read and write so you can speak intelligently. And good character—well, good moral character.

Q. Without calling these people in and questioning them, what you were going on was—with regard to good intelligence, good character—was good reputation in the community and so on?

A. That is correct.

Q. On the requirement that a juror be selected, summoned, returned and sworn without reference to race or place of nativity, what does that mean to you?

A. It means that we do not consider any racial distinctions or their prior residence in connection with selecting the list, in the first place; and that they be summoned in accordance with the list, and the judge will not refuse to let them sit for any racial reasons.

Q. In other words, whether a person is of one race or another is not supposed to be a factor in the making up [211] of a grand jury, is that it?

A. We wouldn't be observing our oath as Jury Commissioners if we did.

(Testimony of Cable H. Wirtz.)

Q. And also the Constitution and laws of the United States and Territory.

A. That's right. I think there is a similar provision in every state of the Union.

Q. Now, just to see that this is definitely in the record, why then is question 7 in the questionnaire—nationality of father and of mother?

A. Well, I can't definitely say offhand. It is not directed towards the racial descent, necessarily. It is directed towards the prior citizenship. In other words, these questionnaires—while they are used by the Jury Commissioners, are likewise used by attorneys at the time they examine the jurors on voir dire. A person who is a citizen of one generation may have an effect upon the attorney as to whether he wishes to challenge him peremptorily if he can't challenge him for cause.

Q. Is it or is it not a fact that questions 3 and 4 would give the Jury Commissioners all the information they need on the citizen qualification, particularly when taken into account that you have their registration affidavits on file which give you all information concerning citizenship?

A. Which registration affidavits? [212]

Q. Registration to vote.

A. Well, he may be born—he may be registered to vote, but we have some instances where he would not be qualified as a citizen. This has nothing to do with question 7, of course—but one of the questionnaires we received came from Oahu Prison and the

(Testimony of Cable H. Wirtz.)

prospective juror told us he would not be available until 1956—and we agreed.

Q. But on that point, Judge, that has nothing really to do with questions 6 and 7. What I am talking about now is citizenship. Isn't it true that questions 3 and 4 give you all the information you need as to citizenship? A. I think so.

Q. Particularly when you take into account that you have the registration affidavits in the County Clerk's office and these questionnaires are sent to registered voters of the male sex—and don't the registration affidavits contain information that would establish, *prima facie*, at least those persons' qualifications as electors?

A. I have never seen the registration affidavits you refer to. I don't know whether that is the practice in this jurisdiction or not.

Q. I mean a person has to register to vote, doesn't he? A. That's right.

Q. And when you register to vote, don't you give certain information to the deputies who take the registration? [213]

A. I don't run that office.

Q. But you have registered to vote?

A. Yes.

Q. Do you recall what information you gave in the register?

A. Well, I told them my name and my citizenship.

Q. Your place and date of birth?

(Testimony of Cable H. Wirtz.)

A. That's right.

Q. Or if you had derivative citizenship, you would have given that information?

A. That is correct.

Q. Place of residence, last residence and things of that character—occupation and so forth.

A. That's right.

Q. That is the information you gave?

A. Yes.

Q. And it is on the basis of those registration affidavits or registered voters that the questionnaires were sent out?

A. That is correct.

Q. Now, then, with regard to those from whom you had no questionnaires, you said you got those from the register of voters?

A. Yes.

Q. And then you looked through them and picked out persons you thought were proper to serve as grand jurors. Now, when you made your selection of 50, were those a deliberate selection or did you just throw all the names [214] into the hopper and pull them out at random as the fifty you would choose?

A. No, it was not deliberate. It is required under the statute after careful deliberation to pick a list.

Q. Out of the——?

A. Those I didn't know personally, either or both of the other Jury Commissioners knew.

Q. Let me ask you this—there are, according to the general election on Maui of November 5th,

(Testimony of Cable H. Wirtz.)

1946—there were 6,572 males registered which would form your basic list from whom qualified persons might come.

A. I would like to correct you on that, Mr. Resner. I think at the end we did have the last registration, but don't forget the Jury Commissioners started working in June and at that time we had to use the registration from the prior election. And then we got the registration for the new primary—so there was a supplemental all along—a final list that we considered was the final registration that you refer to.

Q. But what I am getting at—you said approximately there are six and seven thousand persons from whom eligible grand jurors could be selected.

A. That is correct.

Q. And assuming that some of these persons have not the intelligence, the good moral character or the English knowledge of which you speak, and assuming [215] still that the vast proportion of these people have those qualifications, they would therefore be eligible? A. Yes.

Q. Which would be revealed by your questionnaires and also your own investigation and knowledge. You didn't take the group of those who would be qualified under that registered list, say it would be 4,000 or so, and pick at random from the 4,000?

A. No.

Q. You selected consciously the 50 that you did come up with?

(Testimony of Cable H. Wirtz.)

A. That is correct. And as a matter of fact, as I have pointed out before, it was not a question of polling all of the registered voters. We did it by precinct. And even in case of a precinct where we had maybe a hundred or so qualified, we didn't throw those in the hat and pick out two, if the precinct called for two.

Q. You consciously picked out the two you wanted on the jury?

A. No, we gave consideration to their prior experience, to the fact that they reflect to a certain extent the spirit of the community from which they are selected.

Q. What do you mean by that Judge?

A. The idea of getting your cross section and a representative jury was to get the feeling throughout the [216] county. A person—say, store keeper, is in an excellent position to be able to reflect the sentiments and feelings perhaps of a particular community.

Q. Would you say that the store keeper would have more ability to be representative of the cross section of the community than a working man?

Mr. Crockett: To which we object, if the Court please—purely argumentative.

Mr. Resner: I think the Judge is a very competent witness who understands all the questions.

Mr. Crockett: That is perfectly true, but it doesn't seem to me the place for Counsel to be arguing with the witness—

(Testimony of Cable H. Wirtz.)

Mr. Resner: I am not trying to argue, Judge.

The Court: I think the question is in the form objectionable. It isn't a question of whether one is better than the other. It is a question of whether the one selected was properly selected.

Mr. Resner: Let me rephrase the question then. Is a store keeper more representative of a cross section of the community than a working man?

Witness: Not necessarily. We picked Mr. Saka because—put him on the list because he could reflect the sentiments of his particular settlement or community.

Q. Judge, in selecting this list of 50, was it the purpose of the Jury Commissioners to select a true [217] cross section of the community.

A. So far as we were able. We did not have the benefit of the expert on the census, but on the other hand, the Jury Commissioners were not interested in figures. We were interested in names. A problem always arises—although there are some qualified persons who do not register to vote—on how to find out who they are—because the requirement of the statute is not that you have to be a registered voter. You just have to be qualified to be able to register.

Q. In other words, all the citizenry is eligible even though he might not be registered?

A. That's right. But the question is how to get that information.

Q. Let me show you Defendants' Table 5, Judge,

(Testimony of Cable H. Wirtz.)

and point out to you the breakdown. It appears that of qualified persons 21% of the community are managerial, entrepreneurial or clerical and 79% of qualified persons are laborers. It appears that on the 1947 panel, its composition is 89.1 from the managerial, entrepreneurial and clerical group and 10.9 from the laborer group. Would you say that the composition of the 1947 Grand Jury is a true cross section of the community in so far as the occupational groups of the people are concerned.

A. I don't think I am in a position to answer the question for the reason that you are begging the first question. Not all of those set forth are qualified persons. I have no way of knowing.

Q. Assuming that all of them are qualified, what I am asking is this—is the instant Grand Jury a true cross section of the occupational characteristics of the population of Maui County?

Mr. Crockett: If the Court please, we object to the question. Counsel is asking the witness whether or not that is a true cross section. That is not required by the statute, not required by the decisions of the Supreme Court. All the Supreme Court requests is a representative cross section and not a true and accurate cross section based upon statistics or anything of that nature. The Supreme Court specifically stated that there are certain elements in the community which are not represented at all—for example, lawyers, doctors, teachers and so forth—they are not represented and not entitled to

(Testimony of Cable H. Wirtz.)

be represented. Aliens are a part of our community. They are not represented. So how could the Jury Commissioners by any stretch of the imagination draw up a list that is a true cross section of the community. We object to the question on those grounds, if the Court please.

Mr. Resner: I think the question is proper under the decisions, your Honor. [219]

The Court: The objection is sustained.

Mr. Resner: From what you know of the population, from your own knowledge, Judge, of Maui County and reviewing what has gone before here today—that is, with regard to the occupational affiliations or work of the different grand jurors whose names we have gone over, would you say that those grand jurors proportionately represent on the Grand Jury equal proportions of race employment in the County?

A. I don't think they proportionately represent—it is impossible to get a true proportionate representation. But it is representative of every walk of life in the community.

Q. On the Grand Jury?

A. That's right. Of course there is a vast disagreement between the Jury Commissioners' views as to who are in the so-called management class and your views on the subject or your theories. We regard entrepreneurs and independents as not at all affected or affiliated with management—as well as certain clerical help. I can't see the connection—

(Testimony of Cable H. Wirtz.)

why they should be tied up in all your tables as pro-manager.

Q. The figures on the Grand Jury, broken down, show that out of the 50, some 33—that is, the statistics that we have in evidence here show that some 33 out of the 50 are in the so-called managerial group or [220] ownership group.

A. Your description of the managerial group.

Q. Yes. Now, you wouldn't say that that representation, 66% of the Grand Jury, you wouldn't say that that is representative of the make-up of Maui County outside the Grand Jury?

A. I want to remind you, Mr. Resner, of the proportion that you offered to prove in view of your statistical expert, the Grand Jury was not selected by the Jury Commissioners. We selected the list. The 50 names were put in a box, at which time Mr. Duponte, who has been associated with Mrs. Bouslog on several occasions, was present at the drawing. The drawing was made after due advertisement. Now, take your mathematical chances of your expert. Any combination of those 50 could have been in the final 23 selected. It might have been that all your class in your laboring class would have been on the Grand Jury and none in what we regard as the management.

Q. When I used the 33 I am referring to the Grand Jury as a whole—not this particular 23 on this case. I am referring to the whole 50.

A. I wonder if you understand the procedure by

(Testimony of Cable H. Wirtz.)

which we select the list. From that list, 23 names are picked by the Clerk in open court after due advertising, and it becomes a game of chance as far [221] as the 23 out of the 50 are concerned. And that Grand Jury, except for good cause, serves for the entire term, and the other 27 are through unless there is reason to call on them to fill a vacancy by death or otherwise.

Q. If the proportions went down to the 23, instead of having 66% from the managerial class you might get closer to 75%.

A. And on the other hand, you might get closer to the other proportion.

Q. But the question I am asking you is this—take the panel as a whole, because the panel is what we are concerned with, the list of 50—would you say that the 33 representatives of management on that Grand Jury list are representative of a like proportion of the population outside of the Grand Jury in Maui County.

A. In the first place, I don't characterize them as management as you do and I do think they are representative of the community.

Q. Let me ask you this—would you say that 66% of the population of Maui County is in the management occupation? A. No.

Q. How much of the percentage of Maui County would you say are among management?

A. I have no definite way of knowing. [222]

Q. Can you approximate it?

(Testimony of Cable H. Wirtz.)

A. No, I couldn't.

Q. Would you say it is around three or four or five per cent?

A. No, I definitely couldn't.

Q. You think it could be more than that?

A. Might be—might not. But you overlook the fact that as far as the Jury Commissioners are concerned, we are not concerned with occupation. There is no reason for us to get statistics together to find out how many are in the laboring class and how many in other occupations—just like we are not concerned with the racial characteristic.

Q. Why did you ask the question on your questionnaires—No. 9, "What is your present occupation?"—and 10—"If employed, by whom and name your superior." 11—"What has been your occupation during the past five years?"

A. That is not primarily the concern of the Jury Commissioners. As I pointed out to you, the questionnaires are used by attorneys. And also, it has this concern for the Commissioners—not their place of employment on there, but the fact that they are employed indicates a more stable citizen.

Q. Can't questions of employment, so far as attorneys are concerned in litigation, be easily ascertained on [223] voir dire at the time of trial?

A. That has been our practice ever since I have practiced law in the Territory of Hawaii. Questionnaires are available for attorneys to assist them on voir dire, and those matters can be brought out much more simply and easier that way.

(Testimony of Cable H. Wirtz.)

Q. So you say the questions are in there, but they have no purpose so far as the Jury Commissioners are concerned?

A. Not the prime purpose to determine the occupational statistics that you are talking about, but as I have pointed out, an employed man is a more stable citizen.

Q. There are approximately 10% of laborers on the Grand Jury list of 50 at the present time. Would you say that the percentage of laborers—and this is among the electors—that is, those qualified to be electors of Maui County is 10% or more than that?

A. Well, there are other qualifications besides just being an elector. I have no way of knowing what proportion are qualified, even among our Filipino population who are citizens. In nine-tenths of the cases that come up—of course most of them are aliens—interpreters have to be used. They speak three or four different dialogues—Visayan, Ilocano and several others.

Q. Well, Judge, out of the 6,500, approximately, electors, [224] male electors, are that many voters, and there were 12,400 registered voters last year, and as you have pointed out there could be more than that who have the qualifications to be voters but may not have registered—our Table 5 shows that of laborers, there are 9,686 or 79% of the population qualified; that is, qualified for jury duty—and that takes into account the educational requirements of which you speak.

(Testimony of Cable H. Wirtz.)

A. That is a figure that has been determined by your witness. I can't say whether it is true or not.

Q. I understand that. I am not asking you to agree with me. All I am asking is this—whether in your knowledge or judgment the population of Maui County, of laborers, is in excess of 10%.

A. Oh, possibly. Quite likely.

Q. Quite likely. It would very likely be close to 79%, or, I should say, close to 80% of the population—wouldn't that be right?

A. You mean ordinary laborer? Are you excluding now from your laboring category clerical—?

Q. Yes, excluding those in the clerical, managerial and entrepreneurial positions, which would include professional people and semi-professional people. I am talking about persons who work on a day to day basis as laborers—whether or not the population of the County of those kind of people isn't closer to 80%? [225]

A. I couldn't exactly say. I can say this, though—Maui is predominantly rural. It is almost purely an agricultural county which would imply there would be a large proportion of labor in the field.

Q. Most of the population of the County, then, is what you would class as working people?

A. I can't say just what. All I can say there is a large proportion in the labor class.

Q. Certainly and substantially more than in the so-called management? A. Oh, yes.

(Testimony of Cable H. Wirtz.)

Q. On this question of racial make-up of the jury, let me show you Defendants' Exhibit 5.

(Counsel for Movants handing paper to Witness.)

Q. (continuing) And it appears from that that of the present panel of 50, the list of 50, 56% of the panel is of purely caucasian, and that excludes the caucasian-Hawaiian. Would you say that the population of Maui County is 56% caucasian?

A. No.

Q. Would you say that the population of Maui County of non-caucasian character is something between 80 and 90%?

A. That I couldn't be sure, but it is substantially greater than the caucasian.

Q. Now, this Grand Jury list of 50 has 28 caucasian persons among it. Would you say that that is a true cross section of the community so far as race is concerned? [226]

A. As I pointed out before, race is one of the things we are forbidden by law to even consider.

Q. Yes, I understand that.

A. So that we are not concerned, as I see it, with the matter of race.

Q. Judge, how does it happen then that 56% of the jury or 28 of them can be caucasian when, as you yourself have indicated, the overwhelming population of the County is non-Caucasian?

A. Because they are qualified—just as the other 22 are qualified.

(Testimony of Cable H. Wirtz.)

Q. Do I understand, then, from your statement that the overwhelming number of non-caucasians is not qualified?

A. That I won't know until we finish all of our questionnaires and get everything in. Looking at precinct 1, Lanai, there were quite a few on the qualified list—I don't remember—that have been tentatively set as definitely qualified who have oriental names.

Q. Have you got your file, Judge Wirtz, for the second precinct—Honolua? A. Yes.

Q. How many registered voters are there in that precinct?

A. At the time that we considered it and made our fractional proportion—ratio—we had 96 voters.

Q. Yes. Now, then, you get questionnaires back from all of them, Judge?

A. Not all, I don't think.

Q. Well, let me——

A. There were two, four—six that were not received, according to the tabulation made by the Clerk, but the vast majority—and three, according to this list, were out of the jurisdiction.

Mr. Resner: I want to have marked for identification, as next in order, two lists. One is a 1946 Register of Male Voters of the County of Maui, 3rd Representative District, 2nd Precinct, Honolua—the first being Non-ILWU members and the second being the same thing of ILWU members.

The Court: It will be marked for identification

(Testimony of Cable H. Wirtz.)

with the next succeeding number. You want them marked separately for any purpose?

Mr. Resner: Yes, because they would have to be identified separately. You have 96 questionnaires returned, Judge Wirtz?

Witness: No, I said that there were—I haven't checked this list, but the compilation made by my Clerk indicates that six questionnaires were not received—returned, in other words. The reasons are not given. There are three listed out of the jurisdiction—whether they returned questionnaires, I don't know, but apparently all the rest have complied. [228]

Q. I just want to hand you here Defendants' No. 13 for identification, and that is a list taken off the registered voters' list of non-ILWU members in the second precinct, among whom you will see Mr. Burns' name. He is the juror from that precinct, as a matter of fact.

A. That is correct.

Q. And then I hand you next a list of 65 names of ILWU members in that precinct. That is No. 14 on defendants part, those also being registered voters. I think the comparison with your questionnaires will show that to be the fact, Judge. You see, I assume that your questionnaires went to the registered voters.

A. That is correct. But the questionnaires nowhere show, unless the person voluntarily puts it on, there is no way of knowing which one is ILWU or what union or any union.

(Testimony of Cable H. Wirtz.)

Q. I understand that. But what I want to show is this, Judge—Id. 13 shows you received 31 names and their occupations—their occupations, generally, being the descriptive term we have given of managerial, entrepreneurial and clerical with, as you will see, the various employment, both private and government, as the case may be; and then by looking at the names, you can tell only the race of a great many of them. I think your own figures will show that in that precinct, there are 57 Japanese—54 [229] Japanese out of 97, and 23 Hawaiian—the rest being scattered. And then this Id. 14 showing you ILWU people, being mainly employees, shows 65 people, mainly people employed by Baldwin Packers. And the question is—taking into account the employment make-up in that particular precinct and the racial make-up, in your judgment would Mr. Burns be representative of that group?

Mr. Crockett: To which we object, if the Court please. I think that question is incompetent, irrelevant and immaterial—not a question of whether Mr. Burns is representative. Mr. Burns—naturally one man can't represent a whole precinct. He can't combine in himself all the different races or combine in himself all the different social groups which might be present. To ask the witness whether or not Mr. Burns is representative—on the face of it, it is absurd.

Mr. Resner: I submit the objection. I think the Judge—

(Testimony of Cable H. Wirtz.)

The Court: I don't know, Mr. Resner, upon what basis it is you give that the Jury Commissioners, with no investigation of the racial character, no investigation of the union affiliation—being prohibited by law to make distinctions as to race—are to apply the term "representative of the community." That is, there is no qualification in the statute that requires occupational distinctions to be made. [230]

Mr. Resner: Well, may I point out this to your Honor—the questionnaires which they sent out seek information on the question of race and information on the question of employment.

The Court: I don't take it in that capacity, Mr. Resner, and that is because you come into this jurisdiction as an associate Counsel from a different environment. The long practice in the courts of this Territory has been that the questionnaires are sent out for two purposes, the witness having testified to you, and I take judicial notice of the fact that the Court knows that the questionnaires are sent out for two purposes—one being to identify the personnel to the Jury Commissioners; the other, to have a convenient dossier for lawyers when they examine jurors. And on the question of citizenship, it seems they are informative to the recipient of the questionnaires when they come back whether the conclusions of citizenship may be questionable from the knowledge given as to the nationality of father and mother. Secondly, as to the employment side,

(Testimony of Cable H. Wirtz.)

from what the witness has said it is there for the purpose of aiding the lawyers to identify the associations of the respective jurors when they examine them on the trial panel.

But as to the other feature of it, I of course have to leave it to the examination of the witness on the witness stand whether or not they made any distinction [231] or choice because of occupation. There isn't any evidence in the case as yet that that was made a criterion, and there isn't any evidence or rule of law that makes any distinction that because a man is a working man or because a man, in your designation of employer class, is not a working man—that there is a distinction. If it were so, then this Judge is disqualified to sit in this case because I have never worked with my hands and therefore I am prejudiced and biased against a man who does—which is an absurdity. There isn't any gentleman in this Territory who can accuse either the Judge who usually presides here or accuse the Judge who is now sitting of any bias and prejudice against any citizen of this Territory by reason of his occupation.

Mr. Resner: Well, Judge, of course, I am not here making accusations—I want that understood.

The Court: Oh, yes you are. You are here making accusations in your charges upon this Grand Jury.

Mr. Resner: Certainly—we are certainly making accusations as far as the Grand Jury is concerned.

(Testimony of Cable H. Wirtz.)

The Court: I am pointing out that you apply to the Court the terminology you use to the Grand Jury, and it is an absurdity.

Mr. Resner: If your Honor feels that way about your own qualification, I can't debate——[232]

The Court: It is not a question of feeling; it is a question of knowing——

Mr. Resner: All I know is what I read in the decisions of the Court. I am trying to construe what I think is the Court's ruling of law, and the Court said in the case of Thiel vs. Southern Pacific Company that "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury, drawn from a cross section of the community"—and we are proceeding, of course, Judge, on that proposition.

Now, my question of Judge Wirtz is this—in the second precinct at Honolua—and it is typical of the whole County—as the figures there show, there are 65 people, members of the ILWU, who work for a living with their hands. There are some 31 others who are in the so-called managerial group. Now, there are 54 Japanese and 23 Hawaiian, a total of 77, out of 96 non-caucasian groups in that community, and, as a matter of fact there are less than ten of the so-called caucasian group in that community. The grand juror selected—and selected not by random, not by picking him out from among 96 persons out of a hat—but consciously picked by the

(Testimony of Cable H. Wirtz.)

Jury Commissioners, is Mr. Burns who is, one, a caucasian, and, who, two, is employed in an executive capacity by Baldwin Packers. It is our contention, [233] according to the Thiel case which I have just read to the Court, that that is not representative, not a true cross section, not an impartial jury drawn from a cross section of the community. And it is to that proposition that I address my question.

The Court: The proposition you forgot to read in the same decision of Judge Murphy, found on page 220, is: "Jury competence is an individual rather than a group or class matter."

Mr. Resner: I don't dispute that.

The Court: The question is addressed here to a factor prohibited from the Jury Commissioners to think about or to make a distinction on, and the witness has so testified. Secondly, the requirement doesn't go into any arbitrary situation that in each precinct the majority racial group, in each precinct the majority occupational group must be the source of which the representative is chosen, but that over the whole Island and County that out of the complex they shall get those representing the thought, the feelings, the occurrences, the familiarity with the people in the locality from which they are drawn and be representative of the sentiments that those people harbor.

Mr. Resner: We dispute that it is a representative jury in that regard.

(Testimony of Cable H. Wirtz.)

The Court: On the question that has now been [234] propounded, the Court will have to sustain the objection. We will take a recess until two o'clock this afternoon.

(Second Circuit Court recessed at 12:02 p.m. and reconvened at 2:00 p.m.)

Mr. Resner: Judge Wirtz, in your opinion is the instant Grand Jury list of 50 a true cross section of the community of Maui?

Witness: I think it is.

Q. Why is there such a large proportion of management representatives in the jury in comparison with the population of Maui?

A. Well, they are certainly qualified. It may be that when all the questionnaires are finally in, we will have a better picture on that score, but once again I am not so sure that there is such a predominance of management as you contend because you have a different category of management than we have in mind or is commonly understood.

Q. Just so that may be clear, what is your definition of a management representative?

A. One who is directly in control of or ownership of—that hires labor. But in the distinction that you are trying to point out in this case—discrimination against field laborers—I don't see where an entrepreneur or private person running a private enterprise is on the opposite pole from the category that your clients fall in. [235]

(Testimony of Cable H. Wirtz.)

Q. Don't you think they occupy a different economic status in the community? A. Yes.

Q. For example, would you classify a person who is cashier for Baldwin Packers as a representative of management?

A. I think he is eligible to join a union. I don't know the rules on that—maybe not your union, but he can form his own union. I don't regard him necessarily as a tool of management.

Q. I am not speaking of it in the sense of using a person as a tool of management, but as a representative or allied with management.

A. Everybody in the community, even members of your unions, are servants and representatives of management.

Q. Do you think there is a difference in outlook in economic objectives between management on the one hand and employed workers on the other?

Mr. Crockett: If the Court please, we object to that question. Counsel is simply intervening here at this point argument as to the witness's views as to some abstract questions which are not material to the issue. I understand the witness is on the stand to determine facts, not to argue various abstract things such as Counsel is bringing up now.

The Court: I call Counsel's attention to the [236] fact that seems to have been forgotten up to date—that we are concerned with a proceeding that originates from a charge by Andrew S. Freitas of violence against the laws of the Territory, and there

(Testimony of Cable H. Wirtz.)

is nothing in that situation that raises any question of economic status, but the right of every free individual to be free of violence—and I know of no different psychology whatever that differentiates between violence against one man and violence against the other—which is against the laws of the Territory of Hawaii.

Mr. Resner: Before the record is completed, I think it will be evident that the case that the Grand Jury contemplated here was one which grew out of a labor dispute, and as I read the Ballard case, certain questions may apply to selection of jurors.

The Court: If it is a labor dispute, but I know of no thing—and are you going to prove that Mr. Andrew S. Freitas, who brings this charge, is tied up with management in any respect?

Mr. Resner: Is that competent, your Honor?

The Court: I think that is absolutely basic in view of that being the charge brought by Mr. Andrew S. Freitas against these defendants. On a charge of such a nature as going against the laws of peace in the community, it has nothing to do with management versus labor. It has to do with whether or not individuals violated the statutes of the Territory of Hawaii. [237]

Mr. Resner: We will bring out that the charge made against these men arose out of a labor dispute and that the charge which the Grand Jury purports to investigate was one growing out of a labor dispute, and that these defendants are involved in a

(Testimony of Cable H. Wirtz.)

labor dispute. Under those circumstances, certain standards are set up with regard to the selection of grand and petit jurors.

The Court: I don't think you understand. If this were a case involving an attack upon a labor union by Mr. Andrew S. Freitas, there might be something in what you say. But this is a charge of violating the laws of the Territory as to violence, and upon that every adult human being within the ages of the jury service and who can understandably speak and write the English language and is a citizen has a right to an opinion. And I don't understand the attitude that a person who is employed with management or a person employed as a janitor, on the question of violence could have any different attitude as to whether the facts as brought up by a witness should warrant a charge. The objection is sustained.

Mr. Resner: Just for the record, your Honor, I want to point out in the case of *Fay vs. New York*—

The Court: The Court has ruled and doesn't want any further argument.

Mr. Resner: I am not arguing. I am merely making a statement before—— [238]

The Court: You can make it in your final argument before the Court. The ruling is made and we will proceed with the case. As I told you, we don't want a continuation of that sort of thing.

Mr. Resner: How do you explain, Judge Wirtz, the large proportion of white persons on that Grand

(Testimony of Cable H. Wirtz.)

Jury as compared with the population as a whole of Maui?

Witness: As I stated before, we are not necessarily concerned with race or the difference between caucasians and non-caucasians. They are all citizens. As a matter of fact, as has been borne out in examination, some of those that carry what might be called white man's names turn out not to be purely caucasian, which is common in this community, as it is throughout the Territory.

Q. Do you feel that upon the basis of race that the composition of this Grand Jury list as a whole, the 50 members, is a true cross section of the community?

Mr. Crockett: If the Court please, that question has been asked and answered and we object to it. This is direct examination, and Counsel doesn't have the right to go over the same question and go over it time and time again. The witness just stated—the first question put to him was did he consider this Grand Jury was a true cross section of Maui, and the witness gave the answer to that particular question. The [239] question he is asking now is the same thing.

Mr. Resner: I asked that question on the grounds of occupation. I ask this question on grounds of race.

The Court: Objection sustained.

Mr. Resner: A person older than 60 years is not supposed to serve on the Grand Jury, is that correct?

(Testimony of Cable H. Wirtz.)

Witness: If he claims his exemption.

Q. If he claims his exemption?

A. That is correct. That is my understanding of the law. And often in questionnaires or from personal knowledge, we have information a person doesn't want to claim his exemption. He is not automatically disqualified because he is over 60 years of age. There was one of the grand jurors who was listed and selected who on a previous term served as a trial juror and did not claim his exemption, but he claimed it this time on the Grand Jury. That was Winford Percy.

Q. Mr. Charles Thompson is 67. He is one of those over the age of 60? A. Yes.

Q. And that exemption was waived?

A. He has always expressed a willingness to serve as a juror.

Q. I see. A person is exempt if he is an attorney-at-law. Does that mean an attorney-at-law could serve in your definition of the statute? [240]

A. I think he could, but it would be foolish for him to do so.

Q. I am merely inquiring, Judge, what the disqualification——

A. I notice there are certain government employees who are on the jury list who have waived their exemptions. One is Walter Holt, connected with the Territorial government; and the other was a Japanese boy, I think, Maeda, connected with the County.

(Testimony of Cable H. Wirtz.)

Q. I see Mr. John Plunkett is over 60. He is 65 years of age. He waived his exemption?

A. As far as I know—I don't know. Was that one covered by questionnaire? He hasn't stated to the Court that he wishes to claim an exemption. What precinct is he in?

Q. Twenty-one.

A. Is his questionnaire by any chance in that other file? Where is that other file that we have of the trial jurors, I mean grand jurors. Here it is. Going back to Mr. Charles Thompson, in answer to question 15, "Do you claim disqualification or exemption from jury service?" Answer, "No." John Plunkett—he did not answer the question at all; that is, he left it empty. We presume he is willing to serve until he so indicates.

Q. How do you explain the large number of persons who served anywhere from two to five consecutive [241] years on the Grand Jury in the last six or seven years?

A. Those are persons who we definitely know are qualified. As I pointed out to you, some of them have got their L.L.B. degrees through questioning of counsel, and we are trying to prohibit it by law from repeating them now on the same jury list. A person on this year's jury list can not be placed on next term's jury list, but he can be placed on the trial list. We are trying to extend that somewhat.

Q. In your opinion, hasn't the membership on

(Testimony of Cable H. Wirtz.)

the Grand Jury been narrowed down in the last five or six years by the use of persons who have served two or three or four consecutive years?

A. That may be true, but they are nevertheless qualified, in our opinion.

Q. Let me show you this summary of consecutive service.

(Counsel for Movants handing paper to Witness.)

Q. (Continuing): Between the years of 1942 and 1947, Judge Wirtz, from your knowledge of this situation would you say that that seems to be the fact?

A. My knowledge of the situation dates when I took office, which was in the spring of 1944. The first jury list that came out when I was Jury Commissioner would be the jury list of 1945. [242]

Q. You see here that the analysis we made of the Grand Jury shows that between 1942 and 1947, there were two jurors who served for five consecutive years; six who served for four consecutive years; fifteen who served for three consecutive years; and thirty-one who served for two consecutive years.

Mr. Crockett: If the Court please, may I object to that question until Counsel makes it more definite what he means by the word "served." In other words, it doesn't appear from the question, from the list which he has handed me for my inspection, whether or not these persons were on the grand jury list or whether or not they were

(Testimony of Cable H. Wirtz.)

actually called and served as grand jurors—that is, on the actually sworn panel.

Mr. Resner: On the list, Counsel.

Mr. Crockett: In other words, this list refers entirely to the list.

Mr. Resner: The panel as a whole from which the jury is selected.

The Court: Suppose you modify your question and be explicit, Mr. Resner. The use of the word, “serve”, will leave confusion.

Mr. Resner: Let me correct it. Selected on the Grand Jury list—on that basis, Judge, does that seem to jibe with your knowledge of the situation?

Witness: I do know that in the three years I have been a Jury Commissioner, there have been some who have had service more than one year. Other than that, we haven’t had an opportunity to check into that—as to whether these files are accurate. I have no personal knowledge of any year before the 1945 term.

Mr. Resner: May the paper be marked for identification?

The Court: It may be marked for identification.

Mr. Resner: You will see there also—or you saw a statement to the effect that out of the years 1942 to 1947, wherein there had been six jury commissioners, the list of 50 for each of those years or, we might say, 300 different jurors on the list—that 203 different names appear rather than 300. Does that correspond with your knowledge of the situation, Judge?

(Testimony of Cable H. Wirtz.)

Witness: No, it doesn't because I haven't had an opportunity to check it. I don't know where those figures were obtained, but from my knowledge there have been some who have served in succession or served two or three terms. But that wouldn't be the full 300 over that period of different names.

The Court: The 1947 list that is now in point—how many of those on the list have been on the list for two consecutive years?

Witness: As I recall, I pointed out to my fellow [244] Jury Commissioners that we are now prohibited by law from repeating; so that on that 1947 list, my best recollection is nobody was—nobody who served on the 1946 Grand Jury list, but there are some who served on the 1946 trial jury list.

Mr. Resner: Are a number of persons on the instant Grand Jury list those who have on other occasions served as trial jurors?

Witness: Served as trial jurors and may have served years ago, served as grand jurors.

Q. And are persons taken from the trial jury put on as service—as grand jurors?

A. That is permissible under the law now, yes. That was done because we had investigated them and were satisfied with their qualifications.

Mr. Resner: That concludes the direct examination.

Cross-Examination

By Mr. Crockett:

Q. Judge Wirtz, in regard to the questionnaires and the fact that the questionnaires called for in-

(Testimony of Cable H. Wirtz.)

formation concerning the occupation of the persons to whom you were sending those questionnaires, I will ask you whether or not the Commission took the fact or the occupation in which the person was employed, and the racial descent, and considered those factors in any wise in connection with determining [245] whether he was an intelligent person, and because of his intelligence qualified to serve as a grand juror?

Witness: Yes, I think those factors might have been taken into consideration, combined with all the other matters. As I pointed out earlier this morning, we considered an employed person as a more stable citizen, a healthy example of a stable citizen.

Q. And were those factors also considered for purposes of identification of the particular person?

A. That is correct.

Q. And so far as you are able to say, were any persons excluded by you or by your Commission by reason of their occupation?

Mr. Resner: If your Honor please, I object to that as calling for the conclusion of the witness. The facts speak for themselves, and I think the witness can only answer as to facts and not as to opinions in that regard.

The Court: I understand the question was directed as to fact.

Mr. Resner: It calls for an opinion.

The Court: Objection overruled.

(Testimony of Cable H. Wirtz.)

Witness: To my knowledge, no one was excluded by virtue of any particular occupation.

Mr. Crockett: Will you state whether or not any person was excluded by reason of his economic status? [246]

Mr. Resner: If your Honor please, the same objection because that also calls for the opinion of the witness and not as a statement to the fact.

The Court: On the contrary, it calls for the fact. You will answer the whole question according to fact, Mr. Witness, and not according to opinion.

Witness: To my knowledge, no one was rejected for that reason. We never considered the so-called breakdown economically, occupationally and racially.

Mr. Resner: I take an exception to the Court's ruling on the last two questions and answers.

The Court: The exceptions will be noted.

Mr. Crockett: In so far as you are able to say, were all persons that were considered by you subjected as far as possible to the same tests for intelligence, citizenship and understanding of English? Witness: Yes.

Q. The question which was directed to you when we reconvened this afternoon was whether or not you considered the list a true cross section of Maui. Do you consider the list a fair cross section of those qualified for jury service in this community?

Mr. Resner: I am going to object to that upon the ground it calls for the opinion of the witness,

(Testimony of Cable H. Wirtz.)

and I don't think your Honor permitted me to go into those questions.

The Court: Objection sustained.

Mr. Crockett: We have no further questions, if [247] the Court please.

Mr. Resner: No redirect.

(Witness excused.)

Mr. Resner: If your Honor please, I should like to offer in evidence, in connection with the testimony of the last witness, the file on the instant Grand Jury.

The Court: I am sorry, I can't allow it in that form. You will have to get certified copies because that is an original file of the court and can't go in in this case. You will be permitted to substitute certified copies. You can see the inconvenience it would be to the court.

Mr. Resner: Certainly. We will see that certified copies are made. I merely wanted to reserve the next number in order.

The Court: You simply want those questionnaires that became a part of the Grand Jury list of members?

Mr. Resner: For this particular Grand Jury.

The Court: For this particular Grand Jury.

Mr. Resner: There are some 20 or 21.

The Court: They may be made into a file and given the succeeding number when offered.

Mr. Resner: Is Mr. Bal, the County Clerk here?

EUGENE BAL

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Eugene Bal.

Q. (By Mr. Resner): You are Mr. Eugene Bal?

A. That is correct.

Q. You are County Clerk of Maui?

A. Yes.

Q. How long have you held that office?

A. Since 1936.

Q. I want to show you, Mr. Bal, a paper marked, "List of Registered Voters for the General Election, November 5th, 1946, Third Representative District by Nationalities", and ask you if you are familiar with that document.

A. I am.

Q. Who published that document, Mr. Bal?

A. This list is not for publication. We prepared this list and it is submitted to the Secretary of the Territory of Hawaii and is given to the Governor of the Territory of Hawaii to send to Washington.

Q. And this was taken off the list of registered voters? [249]

A. That's right.

Q. And it shows the total of registered voters, both male and female, according to precinct, on Maui?

A. According to precinct and nationality.

Q. Yes. And that is, it shows the number of each nationality in each precinct of Maui?

(Testimony of Eugene Bal.)

A. That is correct.

Q. And according to this list, there are 34 precincts, is that correct?

A. That is correct. That includes Kalawao.

Q. The leper settlement?

A. The leper settlement.

Q. And there are eleven breakdowns of nationality groups? A. That is correct.

Mr. Resner: I would like to offer this document in evidence, your Honor.

Mr. Crockett: You are offering it in evidence now?

Mr. Resner: Yes.

Mr. Crockett: If the Court please, I object to it on the ground there is no showing by whom the breakdown was made or how or what the basis of that breakdown by nationality group is.

Mr. Resner: Well, I can proceed further on that. Mr. Bal, who prepared this document and made this analysis and breakdown according to precincts and [250] nationality groups?

A. My deputy and my staff.

Q. As a part of the official duties of your office?

A. That is correct.

Mr. Resner: I offer the document in evidence, your Honor.

Mr. Crockett: No objection.

The Court: The document may be marked with the next ensuing number in evidence.

Mr. Resner: Let me ask you this, Mr. Bal—

(Testimony of Eugene Bal.)

what was the purpose of the breakdown into nationality groups of the registered voters?

Witness: I stated in the beginning, we have the instructions from the Secretary of the Territory of Hawaii to furnish this information so that the Governor could incorporate it in his report, and send it to Washington—for what purpose, I don't know.

Q. Who figured out the nationality groups into which the registered voters should be divided? I mean who laid it out that it should be, for example, American, Chinese, English, Filipino, Hawaiian, part-Hawaiian, Japanese, Korean, Puerto Rican, Portuguese and all others?

A. The Secretary of the Territory of Hawaii.

Q. I see. Do you know what the term of "American" means as employed in the breakdown?

A. I take it it means all whites, but of course in that respect—that is our instructions. As County Clerk, I consider every person eligible to vote an [251] American, irrespective of what nationality he is. But that is, as I say, our instructions from the Secretary and he gives us that breakdown—American, Portuguese, Hawaiian, part-Hawaiian, Japanese, and so forth.

Q. The Secretary of the Territory?

A. That is correct.

Q. For example, I see here that we have the groups called American, English and Portuguese, which, of course, are all caucasian persons broken down into three separate categories.

(Testimony of Eugene Bal.)

A. That's right.

Q. Now, "all others"—what would that include?

A. French, Irish, German.

Q. People of other origin?

A. Yes, outside of those nationalities specified specifically.

Q. And this particular document, as I say, you would forward to the Secretary of the Interior and then to Washington?

A. Secretary of the Territory of Hawaii.

Q. Secretary of the Territory of Hawaii and then to the Department of the Interior in Washington, and it is kept here as part of the records of your own office?

A. Yes, sir.

Q. I want to show you next, Mr. Bal, a paper called "Official Tabulation, Maui County General Election, [252] November 5th, 1946", and ask you if you are familiar with that document?

A. I am.

Q. Was that prepared in your office?

A. Yes, sir.

Q. By yourself and your deputies?

A. I do all the preliminary work on this. I prepare the original copy and it is checked by my office staff and deputies.

Q. And this shows the breakdown of the number of the numbers of registered voters, male voters, female voters, votes cast as a result of the election?

A. That's right. Votes cast for each candidate for each office.

(Testimony of Eugene Bal.)

Q. And this is a copy of the original document on file in your office? A. That's right.

Q. And this was the last general election held on Maui—November 5th, 1946, and therefore the last time you took a total of the registered voters?

A. Yes. This pertains to Maui County. There is another tabulation that the Secretary of the Territory of Hawaii issues which covers Kalaupapa. You will note on the 34th precinct, no figures show here. Those people at Kalaupapa don't vote for County officials, only Territorial officials.

Q. But aside from that, this represents the last general compilation of registered voters of Maui County? [253] A. That is correct.

Mr. Resner: I will offer this document in evidence, if your Honor please.

Mr. Crockett: No objection.

The Court: The next consecutive number.

Mr. Resner: I want to show you, Mr. Bal, Defendants' Exhibit 13 for identification and ask you to look at it and tell me whether that appears to be a list of persons who are registered as voters in the second precinct at Honolua when taken together with Exhibit 14, indicating the registered voters—the 96 of them in that particular precinct.

Witness: I will not be able to testify to that, I am sorry.

Q. You can check that against your records?

A. My records—yes, I could if I am allowed to check against my records, I could testify.

(Testimony of Eugene Bal.)

Mr. Resner: That completes the direct examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Bal, according to the official tabulation, the total registered male vote in the County of Maui is 6,572?

Witness: I believe that is correct, yes.

Q. How long did you say you had been County Clerk?

A. Since 1932, and was deputy prior to that. Since 1936 I became County Clerk, but deputy since 1932 to 1936, and been serving as County Clerk since. [254]

Q. As County Clerk, do you have occasion to go around the County conducting the registration?

A. I do.

Q. Are you very well acquainted with the electorate of the County of Maui? A. I am.

Q. From your observation and experience as the County Clerk and registrar of voters, about what proportion would you say are the persons who are eligible to register who have not registered as voters?

A. From past experience and observation, I would judge about 2,000 or 2,500.

Q. Does that include both men and women?

A. That is correct.

Q. And from your observation and past experience, would you say that there are more—a greater

(Testimony of Eugene Bal.)

proportion of the unregistered vote among the men or among the women? A. Among the women.

Q. In regard to the tabulation which you identified as having been prepared by your office, showing the breakdown into the racial groups, do I understand that you prepared that yourself or your staff? A. My deputy and staff.

Q. From what data or information did they make this breakdown?

A. On the affidavit for registration of voters, we [255] have asked the question there—what nationality they belong to. Prior to that time, the records are not so clear. We either contacted these people or used our own judgment. In some cases, I agree we may have been wrong. For instance if a person was John Doe and the wife came in, Mrs. John Doe. John Doe was a white person and I did not know who Mrs. John Doe was; we put her down as white. She may be part-Hawaiian or any other nationality.

Q. You say prior to that time. What time do you refer to?

A. Prior to when I took over in 1936 when we had the registration forms changed whereby they now give us the nationality.

Q. In other words, prior to 1936, there was nothing in the record to show what the nationality was?

A. Very indefinite—only on the cards that were prepared by the former Clerk and his staff.

Q. Does this tabulation that you presented in-

(Testimony of Eugene Bal.)

clude persons who were on the register prior to 1936?

A. Yes, all those that were on the register at the time—at that election.

Q. So then as to those persons, you say it represents more or less guess work rather than an actual count?

A. Quite a few discrepancies, I admit. I would like to clarify that. The last general registration in the County of Maui took place in 1919. The records for [256] 1919 up to 1932 or 1936 is not very, very clear—I must admit.

Mr. Crockett: That is all.

Redirect Examination

By Mr. Resner:

Q. Do your registration affidavits show party affiliation?

Witness: They do not.

Q. You do have such registration affidavits, do you not Mr. Bal?

A. To show party affiliation?

Q. Have registration affidavits?

A. Yes, we have.

Q. A person coming in to register makes out an affidavit, giving you certain information but is silent on party? A. That's right.

Q. And in the primary election, I understand, the person asks for a ballot and can vote for anybody. A. For anybody on the ballot.

Q. Is there any possible way to determine the political affiliation of voters—whether democratic or republican or any other political affiliation?

(Testimony of Eugene Bal.)

A. Not unless you know them well.

Mr. Resner: While Mr. Bal is on the stand and for the record, if the Court please, I would like to show that the breakdown shows that of the registered voters, so far as the males are concerned, in all the [257] thirty-four precincts Americans amount to 427; Chinese to 237; English, 16; Filipino, 103; Hawaiian, 1,109; part-Hawaiian, 530; Japanese, 2,826; Korean, 10; Puerto Rican, 114; Portuguese, 1,099; all others, 257—a total of 6,728.

Mr. Crockett: We object, if the Court please, for the reason that Counsel has included the precinct of Kalaupapa which is the 34th precinct and which is not within the jurisdiction of the Second Circuit Court, as testified to by Judge Wirtz and also by the witness.

The Court: I think perhaps Counsel better let the paper speak for itself.

Mr. Resner: Yes. The only point I am thinking of is in the record it may be easier to find, but with the correction Mr. Crockett notes, which is the last item, 156 in that precinct. The record otherwise is complete—that is, just with regard to the men.

Mr. Crockett: No objection if that amendment—

Mr. Resner: And with regard to women, correcting it for Kalaupapa, the settlement—of Americans, there are 396; Chinese, 153—

The Court: That is women?

Mr. Resner: Women, Judge. English, 12; Filipino, 83; Hawaiian, 952; part-Hawaiian, 588; Japa-

(Testimony of Eugene Bal.)

nese, 2,511; Korean, 20; Puerto Rican, 79; Portuguese, 821; and all others, 218—the totals of 5,831—there [258] being a total of 100 in the settlement among the women. That is all, Mr. Bal.

Mr. Crockett: No further questions.

(Witness excused.)

Mr. Resner: I wonder, if your Honor please, before the witness leaves the court room, if I might ask permission to have him check those two documents we have for identification against his official records.

The Court: It is up to you and the witness.

Mr. Resner: Yes, but the documents cannot be released from the court room without your Honor's permission.

The Court: It is your document. If it is lost, strayed or stolen, that is your responsibility.

Mr. Resner: Well, then, if I may have permission, I will give it to Mr. Bal.

(Counsel for Movants handing papers to Witness.)

Mr. Resner: There is one point that I want to clear up with Judge Wirtz, and it may not be necessary to recall him. But in connection with the exhibit which we put in for Mr. Bal—this one, (indicating) Defendants' No. 17, I can read them off or I can ask the witness, depending upon your Honor—the questionnaires—the precincts which were not questionnaired until the current year. They appear to be based on Judge Wirtz' state-

ment of those they [259] questionnaired in previous years, but not this year but which are being done this year. Third, Mala-Lahaina; fourth, Kam III-Lahaina; fifth, Olowalu; sixth, Wailuku Elementary School; seventh, Iao Elementary School; eighth, Piihana-Wailuku; ninth, Papohaku-Wailuku; 11th, Kahakuloa; 12th, Kahului; 13th, Puunene; 14th, Spreckelsville; 15th, Lower Paia; 16th, Upper Paia; those are the ones that have not been circularized.

I should like to recall Mr. Oshima for just a moment.

While waiting for that witness, your Honor, we have discovered the originals of the tables, and I would like to substitute them for the copies.

The Court: Check with the Clerk.

Mr. Resner: Yes.

Bailiff: Mr. Oshima is not in the courthouse.

Mr. Resner: Then we will proceed with another witness. I would like to call Mr. Pombo.

AUGUSTINE POMBO

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Augustine Pombo. Judge, may I have the privilege of having the attorney read the com-

(Testimony of Augustine Pombo.)

plaint. I think he said something about the Jury [260] Commissioners being led on by the five big—I didn't quite understand. Is it permissible to read it over again?

The Court: You wait until you are questioned.

Witness: I thought I would like to inform—he has been misinformed. To have a man come down from the Mainland here, don't know who is who, and to make such statements—somebody should go after him.

Mr. Resner: Do you suggest you do that?

Witness: No I would like to straighten the thing out. As you would say, I would like to give my story. I have been a champion of the working man for years and to have somebody call me that I been led by the "big five"—not quite right.

Mr. Resner: I have no objection.

Witness: I would like to have permission to state——

Mr. Resner: Go ahead, as far as I am concerned. The Court is directing things.

The Court: I think we had better proceed in an orderly fashion, please, Mr. Witness, and answer questions. Then when we are through, if there is anything else, we will give you an opportunity.

Mr. Resner: What is your name?

Witness: Augustine Pombo.

Q. Where do you live? [261]

A. Wailuku—right here.

Q. Where were you born? A. Right here.

Q. Wailuku, Maui? A. Wailuku, Maui.

(Testimony of Augustine Pombo.)

Q. What is your age?

A. 52—I will be 53 next April.

Q. What is your occupation?

A. I am at the present time delinquent tax collector in the Tax Office here in Wailuku.

Q. How long have you been a member of the Jury Commissioners? A. Since 1934.

Q. How many terms have you served?

A. Since last year—the democrats thought I was making too much money, I guess, because they had somebody else here a year ago and they substituted somebody else in my place and I don't know how well he did, but the Judge asked me to come back again.

Q. You started first in 1934?

A. I started first in 1934 after the democrat died, Dan T. Carey.

Q. Then you were Jury Commissioner from 1934?

A. I was Jury Commissioner from 1934 to—the appointments come up in July—I think it was 1945 when they appointed somebody else—and I was appointed in 1946 to pick out a jury for this year.

Q. So from 1934 down until the present time, you have been a Jury Commissioner except for one year? A. Yes.

Q. Is that correct? A. Yes.

Q. And you are affiliated with some political party?

A. Yes, I have been a good democrat all my life.

(Testimony of Augustine Pombo.)

Q. Therefore you are the democratic member of the Grand Jury Commission? A. Yes.

Q. Here is the list of the Grand Jury, 50 in number, which is the Court's exhibit in this particular case. A. Yes.

Q. Now, let's go down the list. Do you know Mr. Eldredge personally? A. Yes, I do.

Q. And were you in favor of his selection by reason of personal knowledge of him?

A. I was.

Q. And what do you know of him personally causing you to feel he was qualified?

A. I felt he was a capable man. If I was pinched by the cops and had him on the jury, I would be perfectly satisfied he would be fair.

Q. Now, do you know what he does?

A. I don't know. Don't know. I know who he works for. [263]

Q. Who?

A. He used to work for the Pioneer Mill—now over at Lanai.

Q. Take the next person—Toshio Onuma—do you know him?

A. I am not quite sure. I don't remember the name, but I know lots of fellows, but don't remember the name.

Q. You don't remember the name?

A. No. I may know who he is.

Q. Alfred S. Burns is No. 3. Do you know him?

A. I just know him by sight.

(Testimony of Augustine Pombo.)

Q. Do you know his reputation?

A. Yes, very good.

Q. You know he is a superintendent of Baldwin Packers?

A. No, I don't know what he does.

Q. You don't know what he does?

A. No.

Q. Did you look at the questionnaire that he submitted?

A. No, I didn't. I looked at his name, what he does, who he works for—don't pay much attention to the rest of it.

Q. Do you know who he works for?

A. I know who he works for.

Q. Who is that?

A. Baldwin Packers.

Q. Did that mean to you that he was qualified?

A. No, not because he was working for the Baldwin Packers because they got no use for me—the Baldwin Packers haven't.

Q. A moment ago, Mr. Pombo, you made the statement that you didn't know who he worked for.

A. Yes, I don't know what he does.

Q. I understand that, but I understood——

A. Whether he is a bookkeeper or engineer or pineapple expert, I don't know.

Q. I understand that, but a moment ago you said that you saw who he worked for and that was enough.

A. Yes.

Q. What do you mean by "that was enough"?

A. I know—the man been around me a number of times here—some talk—that he is a very intelligent fellow.

(Testimony of Augustine Pombo.)

Q. Do you know Manuel Correia?

A. Yes, I know him well.

Q. Do you think he is qualified?

A. Oh, yes.

Q. Do you know Mr. Ito?

A. No, I don't think I do.

Q. Do you know Mr. Edward Bowmer?

A. Yes, I do.

Q. You know whether he works for Baldwin Packers as a cashier? A. I know.

Q. Did you think he was qualified? [265]

A. I think he is. He used to work in Wailuku before he worked there.

Q. Was there anything particularly about him that caused you to feel he was qualified for the Grand Jury?

A. When he lived in Wailuku, he seemed to be a nice fellow, mind his business.

Q. Do you know Ralph O. Cornwell?

A. Yes, I do.

Q. Do you know whom he is employed by?

A. At the present time, I think I seen him driving this Air Flo truck.

Q. You thought he was qualified?

A. Yes, he is all right.

Q. Tell me, Mr. Pombo, in connection with your discussion of these grand jurors, you had occasion to look at these different questionnaires?

A. Sure.

Q. And you observed in those questionnaires the

(Testimony of Augustine Pombo.)

places where the question was—"Nationality of Father and Mother"? A. Yes, I did.

Q. You noticed that? Did you pay any attention to that question?

A. No, I didn't—don't pay any attention. I don't pay any attention to their nationality.

Q. Are you familiar with the fact, Mr. Pombo, that something like 56% of this grand jury list is made up of white persons? [266]

A. What do you mean, "white persons"? Portuguese is not considered white in Hawaii.

Q. Portuguese are not considered white in Hawaii?

A. Yes, I am not considered white. I am classed with the Hawaiians, the part-Hawaiians, the Chinese, and am perfectly satisfied.

Q. Do you consider yourself white?

A. Yes, but the haoles here don't.

Q. Well, I consider you—

A. Maybe you do.

Q. And I think any anthropologist and anyone who knows anything about race would consider Portuguese as white persons.

A. Only a haole is considered a white man in this Territory.

Q. So I am finding out. Do you know why that question with regard to nationality is included in that question?

A. When I took over this job as Jury Commissioner, Judge Wirtz already had this questionnaires

(Testimony of Augustine Pombo.)

made up, and he asked the Jury Commissioners to use it and we used it. Why he put that in, I don't know.

Q. I see. You continued, however, to use it?

A. I continued to use it because he is a lawyer. He is a much smarter man than I am. He must have had a purpose for making up the question.

Q. When the questionnaires came back, you could see—[267] when the questionnaires came back then by reading that question, what the prospective juror said with regard to the nationality of the father and mother?

A. I couldn't help but see it.

Q. And was that factor taken into account?

A. I don't consider nationality at all when I pick the jury.

Q. How do you explain then the large percentage of so-called caucasian?

A. You mean the haoles?

Q. Haoles as compared——

A. Well, there is only 17 out of the 50.

Q. I beg your pardon?

A. There is only 17 out of the 50.

Q. Only 17? Are you sure of that?

A. Yes, I am almost sure of that. You can come over here and count them with me.

Q. Perhaps so.

A. I just counted roughly.

Q. You maybe know more about it, Mr. Pombo.

A. I may be wrong.

(Testimony of Augustine Pombo.)

Q. Wait a minute until I get my other list.

The Court: I think we had better have a recess for the reporter's sake.

(Second Circuit Court recessed at 2:57 p.m.)

(Second Circuit Court reconvened at 3:08 p.m.)

Mr. Resner: I should like to call Mr. Bal for the purpose of checking the list which he had in the recess. Mr. Bal?

EUGENE BAL

having been previously sworn, was examined and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Bal, during the recess you checked Defendants' Exhibits 13 and 14 for identification with regard to their names and addresses as registered voters in the 2nd precinct, Honolulu County. And what was the result of your check?

Witness: The names correspond with those that appear on the official register for the general election of 1946.

Mr. Resner: I offer them in evidence, if the Court please.

Mr. Crockett: To which we object, if the Court please. May I ask the witness one or two questions?

(Testimony of Eugene Bal.)

Mr. Bal, did you check as to the occupations of these several persons that appear on these lists?

Witness: No, sir, the occupation does not appear on the official register of voters—just the name and address. I checked the names. [269]

Mr. Crockett: If the Court please, the lists apparently have the occupation, and at this time we object to the introduction of these lists in evidence until the occupations are either separated from the list or properly identified.

Mr. Resner: Mr. Bal, do the persons' occupations appear on the registration affidavits?

Witness: That is correct—on the registration affidavits for the registration of voters, but our official list that we submit to all the precincts that we keep in our office, all that appears on the list of voters is the name of the person and the place where they live.

Mr. Resner: But a person's occupation could be checked against their original affidavit of registration?

Witness: That's right.

Mr. Resner: I offer that portion of these papers in evidence, your Honor, which shows the names and addresses.

The Court: You will have to split it. At the present time they contain data that is unidentified.

Mr. Resner: That is the occupation.

The Court: Yes.

Mr. Resner: But I will have to prove that in another way, your Honor.

The Court: It can't be in evidence as an exhibit

(Testimony of Eugene Bal.)

until you have identified the data that you purport to show by it. [270]

Mr. Resner: I suppose it could be in evidence for a limited purpose.

The Court: If you want to take the scissors, I will permit the list as a list of identified voters.

Mr. Resner: Very well. I can't do anything further at this point, Judge. I am through with this witness. That is all, Mr. Bal.

(Witness excused.)

Mr. Resner: I want to call Mr. Oshima. It will only take a minute. He is returning to the Mainland tomorrow and he wants to be free to go.

HARRY TATSUMI OSHIMA

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Oshima, since the—you have been sworn—and since the adjournment of court on yesterday, did you have occasion to check the Grand Jury names for the present panel and former panels against the questionnaires that have been spoken about here in court?

Witness: Yes. I was able to check on the basis of the material supplied to me from the office there.

Q. How far back did they go through the years?

A. 1943, I think. [271]

Q. Down to 1943?

(Testimony of Harry Tatsumi Oshima.)

A. Down to 1943. Even the 1943 was not complete.

Q. And continuing until what point?

A. Up to and including 1947.

Q. Did you find the evidence on those questionnaires with regard to occupation and race to correspond with the information which you previously had?

A. Fairly correct so that in the margin of error I presented in the beginning, there will be no mistake for 1947. I find that in checking the affidavits, there is practically no error.

Q. That is, the occupation and race are practically the same on the questionnaires as on your own earlier investigation?

A. Yes.

Q. I want to show you Defendants' Exhibit 15 for identification which is a breakdown of grand jurors according to length of consecutive service over a period of recent years and ask you if you worked out that compilation from checking the records.

A. Yes.

Q. Does that reflect correctly the number of jurors who served consecutively for various periods of years?

A. That's right.

Q. And also those who served in more than one term, but not consecutively?

A. That's right.

Mr. Resner: I should like to offer the document in evidence. [272]

Mr. Crockett: No objection, if the Court please.

The Court: It may be received in evidence with the next ensuing number—the same number.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: There is one more thing—have you a Census Report with you with regard to certain socio-economic data, Mr. Oshima?

Witness: Yes.

Q. What Census report is it?

A. This is taken from the United States Department of Commerce, Jesse H. Jones, Secretary—Bureau of the Census, 16th Census of the United States, 1940—Population—Comparative Occupation Statistics for the United States, 1870-1940.

Q. Does that include Hawaii and Maui?

A. No—this is a book which tries to give you a background of the tables that are contained in the United States Government publication on the “Population, Second Series, Characteristics of the Population, Hawaii.” It gives you the explanation of the categories which are used there.

Q. We have in evidence here, Mr. Oshima, as Defendants’ Exhibit 11 a publication of the United States Department of Commerce, “Population, Second Series, Characteristics of the Population of Hawaii.” With reference to Maui on certain pages thereof, is it in connection with that and particularly Maui that [273] the document that you refer to bears relationship? A. That’s right.

Q. What is the finding or statement of the government in that regard?

A. Well, I want to read a section from this volume about the significance of those occupational tables. “The socio-economic group——”

(Testimony of Harry Tatsumi Oshima.)

Mr. Crockett: If the Court please, is the witness going to read something from that?

Witness: I want to quote from him.

Mr. Crockett: May I be allowed to see it first.

The Court: Would you point out to Counsel——

Mr. Resner: Would you point it out to me and I will point out to Mr. Crockett.

(Witness handing to Counsel for Movants.)

Mr. Resner: Page 179, Mr. Crockett—"Significance of the Socio-Economic Groups". I might explain to the Court that there appears on the tables different occupational groups, as your Honor has seen—twelve different groups that are broken down. This is the Department of Commerce and the Bureau of the Census' analysis of the significance of the breakdown of occupational groups.

Mr. Crockett: If the Court please, may I have a minute or so to read it?

Mr. Resner: It is two paragraphs—only two [274] paragraphs marked, Mr. Crockett.

Mr. Crockett: If the Court please, we object to the reading of the portion offered by Counsel in evidence as having no bearing whatever upon questions before the Court—that it appears right in the opening paragraph that it is a generalization dealing with the socio-economic situation in the whole nation and not pertaining particularly to the County of Maui.

Mr. Resner: I don't think Counsel——

(Testimony of Harry Tatsumi Oshima.)

Mr. Crockett: It has no bearing whatever upon any issues in this case.

Mr. Resner: I don't think Counsel means to contend, your Honor, that Maui is not a part of the nation.

Mr. Crockett: I don't contend that at all, but I do contend that the conditions may or may not be different from those existing elsewhere in the nation. I don't see where this has any bearing on the issues of the case.

Mr. Resner: This has relationship to the significance of the tables in a general application.

(The Court reading document.)

The Court: If Counsel desires that in the record, the Court will overrule the objection. Whatever force and effect that may have on the question here is a problem I don't know. [275]

Mr. Resner: Would you read that, Mr. Oshima?

Witness: (Reading) "The socio-economic groupings are something more than large subdivisions of the nation's labor force and they are something more than mere summary groups constructed to facilitate the discussion of the broader aspects of the labor force. Each of them represents a distinctive part of the labor force by the use of its own peculiar characteristics and having its own peculiar significance."

And I skip one line.

(Reading further.) "So constituted it is evident that each of these groups represents not only a

(Testimony of Harry Tatsumi Oshima.)

measure segment of the nation's labor force, but also a large population group with a somewhat distinct standard of living—"excuse me—"standard of life economically, and to a considerable extent, intellectually and socially. In some measure also, each group has characteristic interests and convictions as to numerous public questions—social, economic and political. Each of them is thus a really distinct and highly significant social economic group. Proprietors, managers and officials form a very important and in many respects a very distinct, social economic group. They do most of the hiring and the firing. They pay a relatively large proportion of the taxes. They largely control capital. They largely determine (in normal times) what the lines [276] and extent of production shall be, and with their assistance they direct the work of a large portion of the other workers. It is evident that the standard of living of the proprietors and their views on social and economic questions frequently will be quite different from those of their employees." Page 179.

Mr. Resner: That is all.

The Court: Does it say anything in there, Mr. Oshima, as to whether a manager would be unable to take the same point of view as a laborer as to whether he got a punch on the jaw?

Mr. Resner: If your Honor please, I think I might take exception to the Court's question.

The Court: All right. The Court will withdraw the question, and leave it for further comment.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: That completes my examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Oshima, with regard to the list which you identified as showing consecutive years of service of the grand jurors, what did you take into consideration? What did you mean by service?

Witness: Service in the panel of 50.

Q. That is, on the entire list?

A. That's right.

Q. Did you make any study of comparison of persons who actually here called to serve as grand jurors [277] and who were sworn before the Court as grand jurors?

A. No, I didn't.

Q. Did you find that any persons who had actually served had served any consecutive years?

A. No, I didn't.

Q. Did you notice whether or not those who were included on the list and who had actually served were not included on subsequent lists?

A. I don't know that—may I have that question again—I am sorry.

Mr. Crockett: Would you mind reading it, Miss Reporter?

Reporter: (Reading.) "Did you notice whether or not those who were included on the list and who had actually served were not included on subsequent lists?"

The Court: Do you understand the question?

Witness: No, I don't—I am sorry.

(Testimony of Harry Tatsumi Oshima.)

The Court: He means by service that they had finally been drawn out of the box and became active grand jurors considering cases—whether those men who had actually served on the Grand Jury active panel were returned to the list on the succeeding year.

Witness: No, I won't know that—because I didn't study the actual jury, those who were selected for jury, you see.

Mr. Crockett: In other words, you were just [278] looking at the list? A. That's right.

Q. And you noticed that certain names remained on there for several periods of years consecutively?

A. That's right—have nothing to do with the members who were selected out of the 50 into the actual Grand Jury. I had nothing—I did not study individuals who were selected out of the 50 into the Grand Jury.

Q. So then it is clear then that this list, this list that you have made, or this schedule you have made simply refers to those on the large list as filed by the Jury Commissioners? A. That's right.

Mr. Crockett: Will the Court permit me to ask this witness one or two questions based upon schedules or tables which were identified by him, if the Court please?

The Court: Does Counsel have any objection?

Mr. Resner: No, Judge.

Mr. Crockett: Referring to Table 3, which is marked Exhibit 7 and the third group of columns there—have you a set of this, Mr. Oshima?

(Testimony of Harry Tatsumi Oshima.)

Witness: Yes, I have, thank you.

Q. The column which is headed, "After Deductions for Male Non-Laborers From Classes 4-12"—may I ask you again, Mr. Oshima, does that total of 13,967 include non-voters, as well as voters? [279]

A. Yes.

Q. And then turning to——

The Court: While you are on that column on this table, is the percentage symbol—you say that ought to come off? In that column, it says "per cent". That ought to come off?

Witness: Yes, that should be taken off.

The Court: Any objection, Mr. Counsel if I just mark it and initial it as out?

Mr. Resner: I think his Honor refers to this. (Indicating.)

The Court: I see it needs another treatment—the percent goes only to this column. (Indicating.) Look at the way I have marked it and see if that—

Witness: That's right.

The Court: You notice how I have marked it so that the per cent refers to the column over which my line leaves it now.

Mr. Resner: That is correct.

Witness: That is correct.

The Court: The per cent belongs to one column. It is written too close.

Mr. Resner: It belongs only to the last column.

The Court: That's right.

Mr. Resner: "From—4-12" has reference to deductions from classifications 5 through 12.

(Testimony of Harry Tatsumi Oshima.)

The Court: That is right. That is what I understand now. [280]

Mr. Crockett: Then in this same table, that is, the first column, your total of 21,865—as I understand, that refers to male and female workers. That is including citizens and non-citizens?

Witness: That's right.

Q. Does that include as female persons, females who might be eligible to vote, but who would not be workers?

A. That's right. That column will include such persons.

Q. That is, women who are not workers—that is, for instance, a housewife who has no occupation but who might be eligible to vote—is she included in those figures?

A. That's right. Well, that is of course a moot question because to a large extent I would say they would not be included, but I was thinking of the category 10, farm laborers, unpaid family workers. Few of such women are included under there because the Census considers these people, even though they are housewives, helping out with the work of the farm, and therefore gainfully employed, although not paid. So that it will include—but not all—but it will include.

Q. Would it include the wife of a doctor or lawyer?

A. Depends upon whether she has any gainful job.

(Testimony of Harry Tatsumi Oshima.)

Q. If she is not gainfully employed?

A. It will not. [281]

Q. It wouldn't include the wife of any ordinary laborer who was not employed outside—as I say, not a farm worker?

A. That's right.

Q. So that column has no relation whatever to the actual number of voters?

A. No, no relation.

Q. Now, referring to Table 5—you have the column there which is headed, "Qualified", which has a total of 12,265. What does that include again, may I ask?

A. That includes, of course, those individuals whom I have divided into those five categories. It includes also such individuals who form my definition of qualification, namely, citizens; namely, male and also educational qualification, which I for this purpose defined as four years of school completed—who would under these major qualifications become qualified for jury service.

Q. In the first column, you have the total of 21,865.

A. That's right.

Q. And that corresponds with the total of the first column on Table 3 of 21,865?

A. Yes, the total does.

Q. And you just told me that the total, 21,865, did not include those women who are housewives, not earning in an occupation, who might otherwise be voters?

A. That's right. [282]

Q. Now, you say the 21,865 includes all the voters?

(Testimony of Harry Tatsumi Oshima.)

A. No, I have never said that the 21,865 included all the voters. That will include—the same total will include non-voters also.

Q. The 21,865 will include non-voters also?

A. That's right.

Q. But it doesn't include those women who might be qualified to vote but not working?

A. That's right.

Q. What does your 12,669 apply to?

A. That first of all applies to only males.

Q. Which one is that?

A. That 12,669 which you just mentioned. Obviously, you must be a male before you are qualified for jury service—so that is that column.

Q. In your figure for the County of Maui did you include the persons who reside in the leper settlement, Kalawao?

A. Yes, these are included—about 400 or so.

Q. You didn't take into consideration the fact that persons in Kalawao are not subject to jury duty in this circuit, did you?

A. I was conscious of the fact, but the division of 400 people into these different categories would be a very difficult statistical device so that I merely made this assumption that the people in Kalawao will be distributed in the five categories in such a way that it will not affect the percentage. [283]

Q. In other words, you have included them in the percentage? A. Yes.

Mr. Crockett: That is all.

(Testimony of Harry Tatsumi Oshima.)

Further Redirect Examination

By Mr. Resner:

Q. Is your point in that regard that they would be equally distributed over the classifications so that the percentages would not be changed?

Witness: Yes, so the percentages, which are the important thing, will not be changed, first of all; secondly, the magnitude, 455, is so small that even if there is a certain lumping, which I doubt, in one particular category, there will be no influence on the statistics on the percentages.

Mr. Resner: That is all.

(Witness excused.)

Mr. Resner: I assume, your Honor, that Mr. Oshima may be excused. I don't want him again—just from the standpoint of the other side.

Mr. Crockett: We have nothing further from him. [284]

AUGUSTINE POMBO

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Pombo, I will come back to you. We were going to have you go over the list and point out what you described——

Witness: Seventeen haoles—still sticking to the 17 haoles.

(Testimony of Augustine Pombo.)

Q. All right. Let's go down the list. I might say if you could speak a little slower, it would help us here. I think the best way would be to go down the list.

A. Alfred S. Burns is a haole. Edward S. Bowmer is a haole. Ray M. Allen is a haole. Winford Percy——

Q. Let me interrupt you here—Louis Sequeira——

A. No, he is Portuguese.

Q. He is a caucasian though.

A. Well, I don't know he is. I don't know what you call him—his father came from Cape Verde and his mother was very much Portuguese—caucasian.

Q. Yes.

A. But he is classed like I am—with the Hawaiians, Chinese—which I am not sorry at all. As a Jury Commissioner, a haole is a haole and not Portuguese.

Q. Let me ask you—Mr. Sequeira to your knowledge [285] is a caucasian?

A. He is Portuguese. I don't even refer to this caucasian.

Q. He is a Portuguese, a caucasian.

A. I am so used to be called Portuguese that I have stuck to it.

The Court: The witness is trying to tell you something, Mr. Resner, that you would learn if you lived here—that the Cape Verde Portuguese differentiate themselves from the Mainland Portuguese.

(Testimony of Augustine Pombo.)

Mr. Resner: I see. What I am getting at is an anthropological question, if your Honor please, and I am merely trying to determine whether Mr. Pombo——

Witness: Anyway, he is not haole as far as I am concerned.

Mr. Resner: But he is a caucasian?

A. He might be—I don't know what they call him. His father is not called a Portuguese.

Q. Is a Portuguese in your opinion a caucasian?

A. Well, he is supposed to be elsewhere, but not in Hawaii.

Q. I guess that is about as good an answer as we can get at this point. Next is Mr. Percy——

A. Joseph H. Trask.

Q. Mr. Percy.

A. He is haole. Joseph H. Trask is haole. Paul A. Haygood, haole. [286]

Q. What about Mr. Rezents?

A. Portuguese.

Q. Mr. Ayers?

A. He is not haole. Glenn H. Fredholm——

Q. What about Mr. Haygood?

A. He is a haole. Glenn H. Fredholm, No. 21—
H. S. Peterson, he is haole.

Q. Yes—Manuel De Ponte?

A. He is no haole. He is Portuguese. Frank W. Broadbent, he is haole. James M. Fleming, he is haole.

Q. Let me stop you with Mr. Costa.

(Testimony of Augustine Pombo.)

A. He is Portuguese.

Q. Mr. Fleming?

A. James M. Fleming, E. Stanley Elmore, Albert D. Waterhouse, Andrew Moodie, Robert P. Bruce——

Q. What about Mr. Feiteira?

A. He is Portuguese. Richard H. Baldwin——

Q. What about Mr. English?

A. He is not haole. He is part haole—he is married a Hawaiian and he is classed——

Q. What about Mr. Coleman?

A. He is part-Hawaiian — married to a Hawaiian. He associates with them, not the haoles. He is classed as Hawaiian.

Q. Mr. Nunes?

A. Portuguese. Mr. Richard H. Baldwin, he is a haole. Mr. Albert Simpson—— [287]

Q. Mr. Holt?

A. Mr. Holt not a haole—he is Hawaiian.

Q. Mr. Plunkett?

A. He is not considered a haole—he is married to a Hawaiian. He is Hawaiian.

Q. Now we are on Mr. Simpson.

A. Albert G. Simpson—he is a haole. Edward H. Baldwin—he is a haole. That's all.

Q. Well, let's go down the list. What about Mr. Goodness?

A. He is no haole. His grandfather was a haole.

Q. Mr. Thompson?

A. I don't consider him a haole. He don't as-

(Testimony of Augustine Pombo.)

sociate with them, either—not in his official functions.

Q. Just what does that mean, Mr. Pombo?

A. It is hard to explain to you—you don't live in the Islands. If you lived here, you would find out.

Q. I am seeking information.

A. Well, we are brought up that way.

Q. What about Mr. Friel?

A. He is not a haole.

Q. What is he to you?

A. More Hawaiian than anything else—very little haole, if any.

Q. What about Mr. Charles E. Morris?

A. Oh, I forgot that—I am sorry. What number is that? [288]

Q. 48.

A. Oh, I didn't turn it. Yes, he is haole. I worked for him—know him.

Q. Kenneth Auld? A. Not haole.

Q. You know what he is? A. No, no idea.

Q. Paul Reinhart?

A. Paul Reinhart—I got no idea.

Q. He may be?

A. He may be a haole by the name.

Q. Let me ask you this—going over that list and describing as you have those who are haole, so-called, and the number that you have now definitely described on the list, how does that compare with the population as a whole of Maui with regard to the number of haoles there are on Maui?

(Testimony of Augustine Pombo.)

A. There are not very many.

Q. Do you know approximately how many?

A. No, I got no idea.

Q. Would it be more than two or three thousand?

A. I got no idea.

Q. Would you say that the Grand Jury has an overwhelming representation of haoles on it?

A. No, I don't think so.

Q. By comparison with the population, by comparison with their number in the population?

A. Out of the 50 that we have to pick on, we got [289] very few haoles—17.

Q. The question is this—not on the list of 50, but assuming that—I don't know whether there are 17 or more, now. We will have to go through the record and add them up. But is there a greater percentage of haoles on the Grand Jury than there are haoles in the population of Maui?

A. I wouldn't know.

The Court: Did you pick them because they were haoles?

Witness: No, I pick them because I want to give them something to do—if they want a chance to run the country——

The Court: Did you pick them because of their fairness?

Witness: Because they are fair. They are in court—they have to be fair. There is another jury—in case it don't go right on the Grand Jury, the trial jury is waiting for them.

(Testimony of Augustine Pombo.)

Mr. Resner: What did you mean a moment ago—you said they wanted a chance to run the country?

A. Well, they do run the country.

Q. How do you mean that?

A. The majority—lots of these—the Baldwins—they own the place.

Q. I see.

A. And if they want to run politics, just as well give them something to do in courts. They can't [290] run it in here because the population getting too independent.

Q. Let me ask you this—if there are 17 haoles on this list of 50—that amounts to 35%—is 35% of the population of Maui haole?

A. I wouldn't know.

Q. Let me ask you this, to go back over these names again, starting where we left off——

A. What number?

Q. No. 7, Mr. Cornwell. Do you know him?

A. Yes. His grandfather was a haole.

Q. I see. Do you know where the boy works?

A. I see him driving this truck for the Air Ways.

Q. No. 8 is Yong Kam Chew, who is Chinese.

A. Yes.

Q. You know him? A. I know him.

Q. You felt he was qualified?

A. He is a fair Chinaman.

Q. No. 9 is Ray Allen. A. Yes.

Q. And he is manager of Wailuku Sugar Company? A. Yes.

(Testimony of Augustine Pombo.)

Q. You know him personally?

A. I know him.

Q. No. 10 is Wai Ken Tom. Do you know him?

A. I do.

Q. He is Chinese? [291] A. Yes.

Q. And you consider him——?

A. A good juryman.

Q. Most of these that we have gone over now, or most of them on the jury list as a whole—that is, 30 of them didn't return questionnaires, Mr. Pombo. Out of the 50, 20 had questionnaires; 30 did not. Of the other 30, did you know them personally?

A. I know a majority of the fellows. A lot of them don't send questionnaires, we put them on anyhow if I know them.

Q. You put them on if you know them?

A. Yes. If I submit their name to the board and if the other commissioners want them, they put him in.

Q. Would you put on a person that you did not know?

A. I would find out. In my work, I go over the Island quite a bit and I usually check up, find out who he is.

Q. Would you put anyone on the Grand Jury that you didn't know personally?

A. No, not exactly. If he has friends that know him well and they say he is a good man, we take a chance.

Q. If you knew nothing about a person, but you

(Testimony of Augustine Pombo.)

found him otherwise qualified according to age, citizenship, residence, sex, schooling and so on and so forth, but you knew nothing else about him, would you put him on the jury?

A. If I couldn't find another man for the jury that would be qualified, I would put him on.

Q. As against the man you know?

A. If I can get one that I know is good, I put him on.

Q. Here is Mr. Ezell. You know him?

A. I don't know him very well. I know who he is married to.

Q. You know he is working for the air lines?

A. Yes, I know he is working for the air lines.

Q. Do you know Mr. Sequeira?

A. Yes, I know him well.

Q. He is a friend of yours?

A. I went to school with him.

Q. You know Mr. Percy? A. I know him.

Q. What does he do?

A. He used to work with the air base at Kahului.

Q. You know him well?

A. I know him well.

Q. Mr. Nakamoto?

A. I think I do—I am not sure.

Q. Do you know what he does? A. No.

Q. Irving Maeda? [293] A. I know him.

Q. What does he do?

A. He is an accountant for these different stores that they handle.

(Testimony of Augustine Pombo.)

Q. Do you know Mr. Trask?

A. Yes, I do.

Q. What does he do?

A. He is up in Paia—Bank of Hawaii.

Q. Ernest Rezens, you know him?

A. I know him.

Q. And you know what he does?

A. To tell you the truth, I think he runs a—
fireman—or locomotive or something.

Q. Do you know Mr. Ayers?

A. Yes, I do. Know his family.

Q. And he is employed where?

A. I don't know. I don't know where he works.

Q. Mr. Haygood?

A. I don't know him. He is down Coca-Cola
plant.

Q. Mr. Saka?

A. I am not sure whether I do or not.

Q. Mr. Fredholm? A. I know who he is.

Q. What does he do?

A. He is down Kahului Railroad, charge of
trucking, I think.

Q. Do you know who is the owner of the Ka-
hului Railroad? [294]

A. That is a corporation. The Baldwins prac-
tically control that.

Q. Do you know Mr. Peterson?

A. Yes, I do.

Q. What does he do?

(Testimony of Augustine Pombo.)

A. He is manager of the Puunene Store at Kahului.

Q. Do you know who owns that store?

A. I do—A & B.

Q. Now, Manuel De Ponte—do you know him?

A. Yes, I do.

Q. What does he do?

A. Well, I don't know whether he is connected with the Personnel Department—he got demoted now—running a booze joint now.

Q. Which Personnel Department?

A. Kahului Railroad—they put somebody over him.

Q. Mr. Broadbent?

A. Yes, I know him. He is with the H. C. & S.

Q. As an assistant manager?

A. They say he is—I don't know.

Q. Mr. Ajifu—he was the Japanese boy who was hurt in the war?

A. Yes.

Q. Mr. Alu?

A. I know him.

Q. What does he do?

A. I think he still connected with H. C. & S. machine shop. [295]

Q. And Mr. Jack Costa?

A. He still with H. C. & S.

Q. What does he do?

A. I don't know if he is the electrician.

Q. You know him?

A. I know him.

Q. You know James Fleming?

A. I know him. He is a hunter—likes to hunt.

(Testimony of Augustine Pombo.)

Q. He is manager of the Shell Oil?

A. Yes.

Q. Do you know E. Stanley Elmore?

A. Yes, I do.

Q. What does he do?

A. He used to be an undertaker and now automobile man.

Q. And Albert Waterhouse?

A. Know him, but never talked to him—up in Paia.

Q. Maui Agricultural? A. Yes.

Q. Do you know what he is there?

A. No, I got no idea.

Q. Mr. Feiteira, you know him?

A. I know him.

Q. What does he do?

A. I don't know what he does. I know he works Maui Agricultural Company.

Q. And have you known him a long time? [296]

A. Yes, I have.

Q. Andrew Moodie?

A. He is manager of the Paia Store—Maui Agricultural Store.

Q. I beg your pardon?

A. He is manager of the Paia Store—Maui Agricultural Store.

Q. Do you know who is the owner of Maui Agricultural Company?

A. I think it is A & B.

Q. With regard to Robert P. Bruce, do you know him? A. Yes, I do.

(Testimony of Augustine Pombo.)

Q. And he is the manager of the East Maui Irrigation Company?

A. I don't know if they gave him a title. He is in charge of water, I know.

Q. Do you know Mr. H. W. English?

A. Yes, I do—very well.

Q. What does Mr. English do?

A. He is head of the automobile division, Paia—Maui Agricultural Company.

Q. Maui Agricultural Company? A. Yes.

Q. Do you know Mr. Gottlieb Coleman?

A. Yes, I do.

Q. What does Mr. Coleman do?

A. Tractor department, Maui Agricultural Company. [297]

Q. Do you know what he does there?

A. Seems to me he does repair work.

Q. Do you know Mr. Edmund Nunes?

A. Yes, I do.

Q. You know him personally?

A. Yes, I do.

Q. And he is the District Overseer of Maui County? A. Yes.

Q. And you know Mr. Richard H. Baldwin?

A. Yes, I do.

Q. And you know what he does?

A. He is manager of his father's ranch.

Q. And you know Mr. Anthony A. Tam?

A. Not very much. Know who he is.

Q. Is he a farmer?

A. Got no idea what he does.

(Testimony of Augustine Pombo.)

Q. Walter W. Holt?

A. I know him. He is with the Board of Agriculture and Forestry—a good juror.

Q. Edwin K. Muroki—do you know him?

A. I think I do, but I don't remember the name.

Q. You don't know much about him?

A. I don't know much about him.

Q. Mr. John Plunkett, you know him?

A. Yes, I do.

Q. What does Mr. Plunkett do?

A. He is head of the Water Department out there.

Q. For East Maui Irrigation Company? [298]

A. Yes, East Maui Irrigation Company.

Q. And Mr. Albert Simpson?

A. I think he works for Fagan.

Q. He is the vice-president of Hana Hotel?

A. I don't know what he is, but I see him there in the Hana Hotel.

Q. I see. And Mr. Edward H. Baldwin—do you know him? A. I know him.

Q. What does he do?

A. He runs his own ranch out there at Ulupalakua.

Q. Mr. Henry S. S. Fong?

A. Up at Kula. He is in contracting right now.

Q. Do you know him? A. I do.

Q. Charles Goodness, do you know him?

A. I know him.

Q. What does Mr. Goodness do?

(Testimony of Augustine Pombo.)

A. He used to work with the County. I don't know what he does now.

Q. Mr. Charles E. Thompson?

A. He is farming—been raising hogs and cattle for a long time.

Q. You know him, too?

A. I do—a good democrat.

Q. A good democrat? A. Oh, yes.

Q. Any other good democrats on this, Mr. Pombo? [299]

A. Not very many—most of them turning republican.

Q. I take it you are still a good democrat?

A. I am still a good democrat. I will never turn.

Q. Mr. Stanley C. Friel—do you know him?

A. I know him.

Q. What does he do?

A. Connected with CPC.

Q. What is that?

A. California Packing Corporation.

Q. Oh, yes—at least so it is called in California. Charles E. Morris—do you know him?

A. He is over Molokai.

Q. What does he do?

A. Runs a show house over there.

The Court: He is the "Mayor of Kaunakakai"?

Witness: Yes, hard boiled—I worked for him once here.

(Testimony of Augustine Pombo.)

Mr. Resner: Kenneth Auld?

A. He is over Molokai.

Q. And what does he do?

A. Good football player. He works for the pineapple people there.

Q. Is he a department superintendent?

A. I wouldn't know.

Q. Which company?

A. I don't know who he works for.

Q. Paul Reinhart? A. I don't know. [300]

Q. He is listed as an assistant superintendent of Libby, McNeill & Libby. You don't know him at all?

A. No. I probably seen him campaigning.

Q. Yes. How many democrats would you say there are on this jury? A. I wouldn't know.

Q. Do you know approximately?

A. Well, I know Charlie Thompson well. He is one of them. The rest of them—they blow hot and cold the same time.

Q. The rest of them you cannot be sure of?

A. Not sure of.

The Court: Is that because they are independently minded or because they have somebody else's color?

Witness: I don't know. I think they are looking to see who is handing out the most money.

The Court: Oh, I see.

Mr. Resner: Mr. Pombo, with regard to farm workers on this jury, there are no farm workers on it, are there?

(Testimony of Augustine Pombo.)

Witness: I wouldn't know whether there are any or not.

Q. Can you point one out to me—farm laborer?

A. I wouldn't know.

Q. Are you familiar with the fact that, Mr. Pombo, there are close to 9,000 farm laborers here in Maui? [301]

A. 9,000? Where are they all situated?

Q. I am asking you that fact.

A. The only farms are in Kula, and they are not very many.

Q. Farm laborers include persons in the pineapple and plantations and mills.

A. Oh, what I meant by farmers—those fellows who plant cabbages and all that stuff.

Q. No, the term is used to mean those persons who work in the fields and mills. Is one of those persons who work in the fields and mills—pineapple and sugar—do you know any among these 50 on the list who are in that classification?

A. My friend, the union man. He is working for Wailuku Sugar. He is not a farmer. I don't know whether you call them farmers. We don't call them farmers.

Q. I am merely giving you the description as used by the Census, Mr. Pombo.

A. I don't know. I would have to look over the questionnaires to check up on them.

Q. Here are 20 of them.

(Counsel for Movants handing to Witness.)

Q. 20 out of 50. A. There is 50 here.

(Testimony of Augustine Pombo.)

Q. I understand, but you don't have questionnaires for 30 of them. [302]

The Court: Well, this research is obviously going to take the witness a little time. We had better declare a recess between now and tomorrow morning.

Witness: Are you closing up shop?

The Court: We are closing up shop, Mr. Pombo?

Mr. Resner: Well, the point is, Mr. Pombo, between now and tomorrow—we have union hours in court—between now and tomorrow, if you would look at that list and see on this last question of farm laborers, and if you would remember to think over the 50 of any such persons that you know are farm laborers.

The Court: We will take a recess until nine o'clock tomorrow morning.

(The Second Circuit Court adjourned at 3:57 p.m.) [303]

Wednesday, September 17th, 1947, 9:00 A.M.

Deputy Clerk: Criminal No. 2412, Territory of Hawaii, vs. Abraham Makekau, et al., and Criminal No. 2413, Territory of Hawaii vs. Diego Barbosa, et al.

The Court: Does Counsel assure the Court that the defendants are present?

Mr. Resner: I think they are, your Honor.

Mr. Crockett: The Prosecution is ready to proceed, if the Court please.

Mr. Resner: Mr. Pombo.

AUGUSTINE POMBO

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Pombo, of the labor force—that is, people who are considered as workers in Maui County, what percentage of them is Filipino, to your knowledge?

Witness: You mean in the plantations?

Q. In the plantations, in the canneries?

A. I have got no idea.

Q. In the fields and things of that character?

A. I have got no idea. [304]

Q. Would you say as many as 50% of the laboring force?

A. I, wouldn't even try to guess it.

Q. Have you got any idea?

A. No, I have never gone into that any time.

Q. Well, would you say that a substantial number of the workers are Filipinos?

A. Oh, yes, I would say that.

Q. Let me ask you this, Mr. Pombo. Is there a Filipino on the present Grand Jury?

A. No.

Q. Within your recollection, has there ever been a Filipino on the Grand Jury? A. No.

Q. Has there ever been a Filipino called for the Grand Jury panel list of 50 within your knowledge? A. No.

(Testimony of Augustine Pombo.)

and on the following sheet, there are among the Filipino women a total of 84 registered voters in 1946. Did you send any questionnaires out to the prospective grand jurors, or jurors for that matter, in the year 1946 for use in selecting the 1947 jury?

A. The Judge's secretary is doing it now.

Q. No, the question is whether in 1946, last year, you sent questionnaires out to these different precincts throughout the County for use in selecting a Grand Jury for 1947. Did you do that?

A. I don't remember using the 1946——

The Court: He means—were questionnaires sent out last year before you began to work on selecting your jury?

Witness: Oh, yes. We sent out questionnaires before we began to work.

Mr. Resner: Now, in 1946 you sent questionnaires out throughout the County?

A. Yes.

Q. For their returns to see who might be eligible to serve as jurors this year, is that right?

A. Yes.

Q. Did you examine those questionnaires when they came back, Mr. Pombo?

A. We go through every one. [308]

Q. Did you observe in those questionnaires the names of qualified Filipino persons?

A. No, I didn't. I don't know whether we have sent any to Filipinos. I don't quite remember.

(Testimony of Augustine Pombo.)

Q. I have in my hand, Mr. Pombo, a file which is called, "19th Precinct, Haiku." Have you ever seen this file before?

A. Yes, I guess I have.

Q. Well, do you know without guessing?

A. Yes, I have.

Q. When did you see it last?

A. When we were—when we got to work selecting the jury.

Q. Let's go through it. I find here an affidavit returned on October 8th, 1946—and that is about the time you were selecting the Grand Jury—

A. October he sent it in?

Q. October 8th, 1946. Is that about the time you were selecting the Grand Jury?

A. No, let me see. No, this goes out way ahead of time—wait a minute—after this comes in—

Q. When did you meet to select the jury for the last time?

A. I don't quite remember how many times.

Q. I know you said you met a number of times. When was the time you met to select the list of 50?

A. Every time we sat, we selected some.

Q. And when was the last time you sat? [309]

A. I don't know. Judge Wirtz mentioned the dates, yesterday. He has got the dates.

Q. Yesterday Judge Wirtz said that the work was completed on December 11th, 1946.

A. If he said it, he is right because he keeps the record.

(Testimony of Augustine Pombo.)

Q. Have you ever studied the registration lists to find out whether there are Filipinos qualified to serve as jurors, Grand Jurors?

A. Just very few.

Q. Just very few? A. Just very few.

Q. Have you any idea how many?

A. No, couldn't tell you offhand. The average Filipino—I think we would have to call him in and talk to him ourselves rather than look through a questionnaire. They smart fellows, but lot of [305] them hardly speak English.

Q. Well, did you ever make any effort to get a Filipino on the Grand Jury?

A. Well, we tried to get them, but we figured until a lot of them joined—I mean just became citizens. A lot of them are pretty smart fellows.

Q. What efforts did you make to get Filipinos on any of the Grand Juries?

A. We didn't go out of our way to get any of them.

Q. I want to show you, Mr. Pombo, the Defendants' Exhibit 17. This is a list of registered voters.

A. What year.

Q. 1946.

A. Well, the list that we selected, the list in the questionnaires, the present questionnaires, was selected from the 1944 list—election list.

Q. The present Grand Jury?

A. The present Grand Jury.

Q. Was selected——?

(Testimony of Augustine Pombo.)

A. I am pretty sure of that.

Q. —From the 1944 list? A. Yes.

Q. Of registered voters?

A. Yes. Because we began to pick our jurymen sometime in September. [306]

Q. Of what year? A. Of last year.

Q. You started to pick your Grand Jury in September of 1946? A. Yes.

Q. And you used what sources for that?

A. 1944 general election list.

Q. 1944 general election list? A. Yes.

Q. And there was no 1945 list?

A. No. There is no election in 1945.

Q. There was no election in 1945. All right. Let me point out something here to you Mr. Pombo. In the 1st precinct, Lanai City, there are 18 Filipino males as registered citizens. A. Yes.

Q. In Honolua, there is one. In Mala, there are six. In Kam III there are four. In Wailuku Elementary School, there are four. In Iao Elementary School, there are four. In Piihana, there is one. In Papohaku, there are four. In Waihee, there is one. In Kahului, there are three. In Puunene, there are 13. Spreckelsville, one. Lower Paia, three. Upper Paia, 7. Keahua, one. Haiku, 12. Huelo, two. Keane, one. Hana, three. Kipahulu, one. In Keokeo, there are four. In Kihei, there is one. In Pukoo, one. In Kaunakakai, there are three. In Maunaloa, four—a total of 103 men. [307]

A. That is the 1946 list?

Q. The 1946 list, yes. That is just the men—

(Testimony of Augustine Pombo.)

and on the following sheet, there are among the Filipino women a total of 84 registered voters in 1946. Did you send any questionnaires out to the prospective grand jurors, or jurors for that matter, in the year 1946 for use in selecting the 1947 jury?

A. The Judge's secretary is doing it now.

Q. No, the question is whether in 1946, last year, you sent questionnaires out to these different precincts throughout the County for use in selecting a Grand Jury for 1947. Did you do that?

A. I don't remember using the 1946——

The Court: He means—were questionnaires sent out last year before you began to work on selecting your jury?

Witness: Oh, yes. We sent out questionnaires before we began to work.

Mr. Resner: Now, in 1946 you sent questionnaires out throughout the County?

A. Yes.

Q. For their returns to see who might be eligible to serve as jurors this year, is that right?

A. Yes.

Q. Did you examine those questionnaires when they came back, Mr. Pombo?

A. We go through every one. [308]

Q. Did you observe in those questionnaires the names of qualified Filipino persons?

A. No, I didn't. I don't know whether we have sent any to Filipinos. I don't quite remember.

(Testimony of Augustine Pombo.)

Q. I have in my hand, Mr. Pombo, a file which is called, "19th Precinct, Haiku." Have you ever seen this file before?

A. Yes, I guess I have.

Q. Well, do you know without guessing?

A. Yes, I have.

Q. When did you see it last?

A. When we were—when we got to work selecting the jury.

Q. Let's go through it. I find here an affidavit returned on October 8th, 1946—and that is about the time you were selecting the Grand Jury—

A. October he sent it in?

Q. October 8th, 1946. Is that about the time you were selecting the Grand Jury?

A. No, let me see. No, this goes out way ahead of time—wait a minute—after this comes in—

Q. When did you meet to select the jury for the last time?

A. I don't quite remember how many times.

Q. I know you said you met a number of times. When was the time you met to select the list of 50?

A. Every time we sat, we selected some.

Q. And when was the last time you sat? [309]

A. I don't know. Judge Wirtz mentioned the dates, yesterday. He has got the dates.

Q. Yesterday Judge Wirtz said that the work was completed on December 11th, 1946.

A. If he said it, he is right because he keeps the record.

(Testimony of Augustine Pombo.)

Q. Now this questionnaire was returned on October 8th, 1946, two months before the work was completed. You see October 8th, 1946?

A. Yes.

Q. Returned it before October 8th, 1946. This gentleman filled it out on the 28th of September, 1946, and this shows that a voter by the name of Joseph Dias Barona, who was born at Hilo, Hawaii, on October 8th, 1918, was 27 years old, and has been in the Territory all of his life, and is married and is a Filipino by origin—at least his father and mother are—and that he is employed as a chauffeur at the Naval Air Station and that his occupation was laborer and truck driver, and he was a student at St. Anthony's School and finished the 9th grade—did you investigate that man for Grand Jury service—duty?

A. We probably did. We have had others a whole lot better than he was.

Q. Others of Filipino nationality?

A. No, Mr. Resner, I would like to—we going through a lot of trouble in going out picking [310] nationalities. I can cut that off short. I don't pick a man by his nationality. I pick a man on his merits. If I going over the questionnaires, if I think he is a good man, regardless of whether he is Japanese, Portuguese or haole, I ask the rest of the Jury Commission to include him in the list.

Q. How do you explain the fact that there has never been a Filipino serving as a grand juror on Maui?

A. We haven't come to it.

(Testimony of Augustine Pombo.)

Q. Why not?

A. He is just as well a citizen as anybody else—I don't consider him a Filipino either—we just haven't. Only 50 in the Grand Jury out of how many voters in 1945. Pretty hard to put them all on the Grand Jury.

Q. Yes, but why is it that with a substantial portion of the labor force of Maui Filipino—and of course you recognize that the Grand Jury is supposed to be a cross-section and representative of the community?

A. Well, it is.

Q. It is supposed to represent all the groups in the community.

A. It is.

Q. And a large group of the community is Filipino.

A. I don't consider that. I don't draw the color line. You are a haole, you might do it—I don't.

Q. I am just trying to get the record straight.

A. I pick a man on his merits. If he is a Hawaiian, Portuguese or Japanese—don't make any difference to me.

Q. Try to answer the question, Mr. Pombo.

A. We just didn't come to him.

Q. A substantial portion of the population of Maui is Filipino, isn't it?

A. Might be, I am not sure.

Q. There isn't any question in your mind about it?

A. I haven't looked at it. I can't give you any figures. Maybe.

(Testimony of Augustine Pombo.)

Q. Suppose in a few minutes I show you the figures from the United States Census.

A. If you can show me the figures.

Q. But you do concede, of course, that a substantial portion of the labor force is Filipino?

A. I wouldn't doubt that—I guess they are. I wouldn't know. I haven't seen any figures.

Q. I want you to give me your best answer as to why there has never been a Filipino on the Grand Jury?

A. We just have a lot of other men a lot better.

Mr. Crockett: May I object to the question?

The Court: Already answered.

Mr. Resner: Let us continue further on. We see next on one of these questionnaires which was returned on October 3rd, 1946 the name of Vincente Engoring, who was born February 10th, 1925 at Kapahulu, [312] Maui, lived here all of his life, who is employed by Libby, McNeill & Libby, and who had attended the Hana School and finished the 9th grade. Did that questionnaire ever come to your attention before? A. Must have.

Q. Did you consider this gentleman for jury service? A. Must have—I don't know.

Q. Did you ever call in a Filipino citizen to talk with such a person and find out whether such a person qualified for jury service?

A. No, we haven't.

Q. The next person is Frank Estrella, Jr., who lives in Puunene, Maui, and who was born on Sep-

(Testimony of Augustine Pombo.)

tember 11th, 1919 at Haiku, Maui, and who has lived here all of his life.

A. At Puunene Dairy.

Q. Yes, I see that.

A. That is owned by H. C. & S. Company.

Q. Yes, I see that. And I see also that he is a plumber's helper and truck driver; that he went to Haiku School and Lahainaluna High School; that he finished the 10th grade. Did you ever consider him for jury service? A. We must have.

Q. Not "you must have"—did you?

A. We must have. We got so many to go over.

Q. Do you have any distinct recollection of any Filipino that you considered for jury service?

A. How do you know this fellow is Filipino?

Q. He states there the nationality of his father is Filipino. A. Portuguese.

Q. The nationality of the mother is Portuguese. But I am asking you—do you have any recollection, as you sit here, of any Filipino that you seriously considered for jury service?

A. We must have. We went through this. We found others a whole lot better; so we picked others.

Q. What was the standard that you employed whereby you decided others were better than the three cases mentioned so far?

A. We go over the list. I rather have a man I know is a good juryman personally than the fellow I don't know on paper.

The Court: What do you mean by the term, "good juryman" that you used?

(Testimony of Augustine Pombo.)

Witness: A man that is intelligent—that is what I consider.

The Court: Did you take into consideration whether or not he had a reputation so he was trusted by neighbors?

Witness: Yes, we do—whether he has been in jail before.

Mr. Resner: Mr. Pombo, I mean you had no information that showed that these gentlemen whose names we read were not intelligent.

A. Well, just as I say, there are other fellows I feel are better.

Q. Of the names we have gone over, have you any information which indicated that they are not intelligent?

A. No, nobody told me they were not.

Q. Have you any information which indicated that they don't have good moral character and have been in jail?

A. No. I don't know anything about it. All I know what they appear on here. (Indicating.)

Q. So far as you can tell from those questionnaires, they appear to be perfectly competent and qualified for jury service?

A. They look all right on paper.

Q. The test you really used is that you selected people you knew personally?

A. I do that quite a bit.

Q. The next person is Gilbert Eufonio Gonzado whose address at home is Baldwin Camp House No.

(Testimony of Augustine Pombo.)

31; who was born at Kapulena, Hawaii; who has lived in the Territory all his life; who states his nationality—the nationality of his father and mother as Filipino; that he is a chauffeur; that for the past five years he had been in the United States Army; that he had gone to Honokaa High School and Kalakaua High School; and that he had finished the 9th grade in school. [315] This was returned, dated at least October 3rd, 1946. Was this gentleman considered for jury service?

A. We must have gone over it.

Q. Next is Ortello, Joseph Gumba, whose address is Post Office Box 382, Rice Camp, Haiku, Maui; who was born September 13th, 1920 at Haiku; who gives his parents as Filipino; who states that he has been in the army the past five years; and that he had gone to the Halehaku School; that he had finished the 3rd grade. He returned this on October 2nd, 1946. Was this gentleman considered for jury service?

A. He must have been.

Q. Next we see Francis Damion Segundo, whose home is Haiku, Maui; and who was born July 16th, 1922; at Honolulu; who lived in the Territory all of his life; whose parents were Filipino—his father, Filipino and his mother, Hawaiian; employed at Libby, McNeill & Libby; he is a truck driver; gone to the Haiku School through the 8th grade. He returned this on October 3rd, 1946. Was this gentleman considered for jury service?

A. He must have been.

(Testimony of Augustine Pombo.)

Q. Here is Salvador Seno, whose home is at Kuiaha, Maui; who was born at Kohala, Hawaii, on June 20th, 1913; lived in the Territory all of his life, and on Maui 19 years; parents, Filipino; occupation is [316] carpenter; who had gone to Maui High School through the 9th grade. He returned this questionnaire on October 6th, 1946. Do you know this gentleman?

A. I don't know who he is, but we must have gone over——

Q. When you went over any of those names, wasn't there anything that indicated to you you ought to call him in?

A. No, we find other men who are better; so we use the other.

Q. How did you determine that other men were better, Mr. Pombo, without investigating these men further?

A. Well, we picked them—we have got the jury. You have seen the jury—a darn fine bunch of 50 men there.

Q. Would you answer the question.

A. We consider their character, their ability, their—what-you-call-them——

Q. What I am getting at, Mr. Pombo, is how did you determine that the men who are on the jury were better than these men whose names I have read to you and have gone over—without your investigating these men or calling them in or doing anything further with respect to them?

(Testimony of Augustine Pombo.)

A. Well, just as I say, you see the Grand Jury, you questioning them. They must be good men for you to [317] question them. You are afraid of them.

Q. That is not the question, Mr. Pombo. The question is how did you determine that the men on the jury are better than men whose names I have read to you—without your investigating any further the men whose names I have read to you other than looking at these questionnaires? What standard did you use?

A. Well, we picked men—majority of them with better education. They are in business in the community.

Q. Yes. Was it your feeling that a man in business would be better qualified than a man out of business?

A. He has got a better head on him.

Q. Is that the conclusion you arrived at?

A. If I can pick a business man, got a business of his own, and good moral character, I would just as soon pick him than pick some juror I don't know anything about other than what you see on paper.

Q. You would rather pick a person who is a business man, whom you know personally, who has a good head, as against a man who appears to be a working man, as on these questionnaires appear, without knowing anything more about them?

A. Also not only a business man, a fellow that is working for a business house—let's say, a good clerk or a good bookkeeper. He would be a whole [318]

(Testimony of Augustine Pombo.)

lot better than some other fellow—just an ordinary truck driver.

Q. Or a man who works in the fields or things of that character.

A. Well, I wouldn't say fields—they got some smart fellows in the fields too.

Q. Well, in the mills or canneries or wherever it is they might work. Is that what you are saying?

A. Not exactly with the mills. Anybody can be a truck driver.

Q. The question I am getting at is this—are you telling me——

A. No, we give the fellow in the field just as much consideration as the business man.

Q. Are you telling me, Mr. Pombo, that in selecting the jury, you selected those who were in business rather than those who worked with their hands because you thought that the man who was in business was better qualified than the others?

A. No, I say that the man in business, the man who works for the business man too.

Q. Yes.

A. The clerk, bookkeeper—he is usually more qualified to be a juryman than the guy that gets out and works with a hoe.

The Court: Did you have a certain percentage ratio that you applied to these respective precincts?

Witness: Yes, we have. We can only pick so many. We can't pick more than the required number.

(Testimony of Augustine Pombo.)

Mr. Resner: Well, the percentage is based on the population of the precinct, isn't it?

Witness: Yes.

Q. Now, according to the papers, Mr. Pombo, which are in the front of this file which indicates the qualified jurors, the questionable and the non-qualified—those that are listed under qualified are admittedly qualified to be on the jury, is that right?

A. Yes.

Q. And I see that of the names I have read to you, you and your fellow commissioners agreed that Mr. Barona, that Mr. Estrella and Mr. Segundo were all qualified. A. Yes.

Q. Now, next you have a list which is questionable. What does the caption, "Questionable" mean?

A. Well, their questionnaires did not look as good as this questionnaires with these people.

Q. But where it appeared questionable, did it mean that the probability was that they could qualify for jury service after you brought them in and talked to them and were satisfied that they were qualified. Is that it?

A. Yes, they could qualify. Usually when we run out [320] of jurymen—like picking the trial jury, we usually pick men for that particular precinct, and sometimes we run out of fellows and we pick them from the next list.

Q. And on that list, I see you have Gumba Ortello. No—not him, excuse me. You have Mr. Vincente—wait a minute now—I will check in a

(Testimony of Augustine Pombo.)

minute, because he doesn't appear anywhere. Mr. Segundo, that's right, isn't it? A. Yes.

Q. And Mr. Sena—that's right, isn't it?

A. Yes.

Q. And of the "Not Qualified," you list Mr. Joseph Ortello and Patrick Ortello. A. Yes.

Q. I will find out about Mr. Vincente.

Mr. Crockett: If the Court please, might I ask that Counsel have the list he just referred to as qualified, non-qualified and questionable more definitely identified so that the record will show just what he was referring to?

The Court: Mr. Resner, there has been a question of identifying for the purposes of the record what you are using.

Mr. Resner: I am using a file that states, "19th Precinct, Haiku," and it has no other caption on it, but I think a fair description would be—the [321] juror questionnaires filled out and returned for that 19th Precinct of Haiku.

The Court: And as I understand it, you are using the fly leaf pages of the file which Judge Wirtz, as a witness, indicated when he was on the stand as being a gathering together of the names on the questionnaires included in the file which, after consideration by the Commissioners, were listed up in respective categories for further use.

Mr. Resner: That appears to be the description.

The Court: The first page is a list of those in the precinct showing unqualifiedly the qualifications which they were seeking.

(Testimony of Augustine Pombo.)

Mr. Resner: In the Jury Commissioners' opinion.

The Court: And the second page of the list is a list of names which they had considered and which they entitled, "Questionable," for further search. And then there is another segregation. What are those entitled?

Mr. Resner: Another group called, "Exempted." Another group called, "Not Qualified"; and "Out of Jurisdiction."

The Court: That is similarly on all the questionnaire files that were used by Judge Wirtz when he was on the stand?

Mr. Resner: So it appears. The name of the other one who was qualified was—oh, questionable. Here it is, Mr. Pombo—Engoring Vincente—he was the other one that you mentioned as questionable.

A. Yes.

Q. Now, the two that you disqualified were the two Ortellos. I see that Mr. Patrick Ortello here says he went through the 8th grade in the Hana School, was employed by the Kahului Railroad Company—can you tell me why he was disqualified?

(Witness mumbling.)

Q. You want to know where Ortello is?

A. Yes.

Q. The preceding pages.

A. I don't know why we put him on the—I don't know why we did.

Q. You didn't call him in?

A. No, we didn't

(Testimony of Augustine Pombo.)

Q. And it appears that Patrick Ortello was born on October 2nd, 1924, at Ulumalu, Haiku, Maui, and went through the Hana School in the 8th grade—Patrick Ortello, Filipino in origin.

A. Unless the other Commissioners went out and see for themselves and decided that the man was not as good and notified the other Commissioners that this man was not as good as the others.

Q. And the other was Joseph Gumba Ortello—born September 13th, 1922 at Ulumalu, Haiku, also Filipino in origin; employed by the Kahului Railroad [323] Company and went to the Halehaku School through the third grade.

A. I don't know whether the other commissioners contacted him personally—Mr. Chatterton.

Q. By and large, didn't you agree among yourselves with your fellow Commissioners, Mr. Pombo, that the 8th grade was sufficient education?

A. Oh, yes.

Q. And there are jurors on the list who have only an 8th grade education?

A. Yes, there are.

Q. And there are some who have less?

A. Some with jury experience.

Q. With less than an 8th grade education?

A. Yes.

Q. As a matter of fact, most of the grand jurors apparently on an educational basis were college people, is that right?

A. Well, I am pretty sure that most of them have had some high school anyway.

(Testimony of Augustine Pombo.)

Q. If you went through the list, you would find most of them had a college education. You wouldn't disagree with that, would you?

A. I wouldn't disagree with you.

Q. Again, in the same file, Mr. Pombo, here is Mr. Vincente Engoring whom you have put down on the list as questionable. I see he has a 9th grade education. Do you know why he would be questionable rather than [324] Qualified?

A. I don't know why we put him on the list. The other Commissioner may have had something to do with it.

The Court: You might shorten your investigation, Mr. Resner, by directing your attention again to the statute, referring to Section 9800, that "All of such selections shall be citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt——"

Mr. Resner: Well, I agree—careful investigation. I am trying to find out what careful investigation was made. I hardly think it is an investigation if a man's questionnaire is looked at and nothing further done.

The Court: You are dealing with a list that is, so-called, questionable. That doesn't mean to the Court that a decision has been made, but simply set aside until a further careful investigation can be made. And I think we are wasting time on the evidence that has been heretofore given—that is obvious.

(Testimony of Augustine Pombo.)

Mr. Resner: I should like the privilege of proceeding, your Honor. Mr. Seno finished the 9th grade. You will see his handwriting seems to be fairly good, doesn't it, Mr. Pombo? He is a carpenter; went to Haiku School and Maui High School.

Witness: I was just comparing the handwriting.

Q. Yes. Why is he on the questionable list rather than on the qualified list?

A. Maybe the other Jury Commissioner had something to do with it.

Q. You don't know the reason yourself?

A. I don't remember.

Q. And here is Mr. Segundo, who is a laborer with Libby, McNeill & Libby; went through the 8th grade. Do you know why he is on the questionable list rather than the qualified list?

A. No, I don't know.

Q. You know of no reason to mark him as questionable?

A. No, the other Commissioners may have had something to do with it.

Q. Here is the file of questionnaires from the 1st precinct, Lanai City. There are, as I recall it, a great many Filipino laborers on Lanai in the fields and canneries. Isn't that so, Mr. Pombo?

A. Yes, I think that is so.

Q. I think there may be close to 1,500 or 2,000.

The Court: Mr. Resner, I don't know that that is material to any consideration before the Court.

(Testimony of Augustine Pombo.)

The requirement again in the statute is that it be a list representative of the qualified citizenry of each circuit, and according to your questions to the witness there are 13 persons who come forward as citizens on the qualified list, or something of that nature.

Mr. Resner: Where? In Lanai? [326]

The Court: Something of that on Lanai, so that your question of 1,500 laborers begs the question that is before the Court.

Mr. Resner: On Lanai, if your Honor please, there are 18 males, out of a total of 336 qualified citizens. There are nine Filipino women there.

The Court: The Court at this time has announced that it is not concerned with women in view of the fact that Congress has not seen fit to make that a consideration. The record is prohibited to you by the Court's refusal to discuss the question of women, and I don't want any further questions along that line. You may have your exception to it. I am relying on the decision of the very case cited by Counsel—the Ballard case.

Mr. Resner: I take exception.

The Court: And your exception may run as a bar to any further question involving women citizenry on the grand or trial jury.

Mr. Resner: I make the point, but the exception is preserved for the record as a whole?

The Court: That should be clear to you that I am barring any further examination on the ques-

(Testimony of Augustine Pombo.)

tion of women in view of the fact that in the Ballard case it distinctly says that this question is a matter for the local jurisdiction, and Congress has taken a hand in this local jurisdiction. [327]

Mr. Resner: Yes, I am merely taking my exception, your Honor.

The Court: You have had your exception. Now enough of this. Let's pass on from that woman question.

Mr. Resner: Mr. Pombo, I see here in the first precinct at Lanai the name of John Cornelio.

Mr. Crockett: If the Court please, may I interpose an objection here. I submit, if the Court please, it serves no useful purpose and it is not material for the record for Counsel to go on and pick out each individual name of a person who is Filipino, and there is nothing in the record at the present time showing there was any discrimination against these people by virtue of being Filipino. I didn't make the objection in respect to the other precincts, but if he is going through the whole list of the County of Maui and get simply the same thing, I submit, if the Court please, it is certainly a waste of time and crowding the record with a lot of material that has no bearing.

The Court: The Court will allow Counsel to proceed for the purpose of illustrating his point with this additional precinct.

Mr. Resner: Now, John Cornelio's home is Lanai City, Lanai; born at Kohala, Hawaii—Nuilii,

(Testimony of Augustine Pombo.)

Kohala, Hawaii; whose parents are given as Filipino; [328] who is single; 27 years old; who is an assistant gang luna at the Hawaiian Pineapple Company; who has been a tractor operator; and who attended the Makapala School at Hawaii; finished the 8th grade; returned his questionnaire on September 27th, 1946.

Witness: Oh, we must have gone through him.

Q. Now, I see that you have marked him as a qualified prospective juror. A. Yes.

Q. Did you consider him any further?

A. Well, Lanai was only one man that we picked for the Grand Jury.

Q. The question is whether or not you considered him. A. We must have considered him.

Q. Do you have any distinct recollection of considering him?

A. We must have; we got one man.

Q. Do you have any recollection of considering him? A. We must have.

The Court: Doesn't it show on your list, Mr. Resner, that they put him on the qualified list?

Mr. Resner: Well, what I am trying to find out is how far the investigation went—what discussion occurred after that. Now here is a man who gives his name as Douglas Marcelino Laboya—

Witness: I think it might be a "G"—Gaboya.

Mr. Resner: It might be—whose address is Lanai City; born on August 8th, 1920, at— [329]

A. Looks like Kahului, Oahu.

(Testimony of Augustine Pombo.)

Q. It does—who has been 26 years in the Territory; truck driver; employed by the Hawaiian Pineapple Company; who went to the Waianae School; finished the 8th grade. I see he appears on the questionable list—Gaboya. Here we have Mr. Carl Larato—and the last name is Herolaga; whose home address is Lanai City; who was born in Hilo, Hawaii, on December 9th, 1918; who is married; of Filipino origin; who is a truck driver at Hawaiian Pine; who finished the Waianae School through the 8th grade—and he appears on your so-called qualified list. A. Yes.

Q. Next is Ted Simplicio—last name is Herolaga, whose address is Post Office Box 13, Lanai; born December 4th, 1920 at Hilo, Hawaii; whose parentage is Filipino; truck driver with Hawaiian Pine; who went to the Waianae School through the 9th grade. A. That's right.

Q. Returned questionnaire on September 27th, 1946.

A. He says, "Not enough education."

Q. He says, "Not enough education," but he went through the 9th grade. Would you take a man's statement——

A. Where did we put him?

Q. You put him on the questionable list. We have George Ramaila; residence, Lanai City; born, Maui, August 8th, 1915; married; 31 years old; three children; [330] of Filipino parentage; a truck driver at Hawaiian Pine; went to Hilo High School Shop, through the 8th grade——

(Testimony of Augustine Pombo.)

A. What is his name again?

Q. Ramaila. He appears on the questionable list. Do you know why he appears on the questionable list?

A. He claimed disqualification and scratched "Yes" out and puts "No."

Q. He went through the 8th grade.

A. Yes.

Q. Writes well.

A. We must have had reason for putting him there—I forgot—no idea what the reason was.

Q. You have Vincente Compania—and the last name, Saloricman; resident, Lanai City, Lanai; born, Lahaina, Maui, July 19th, 1924; married; one child; Filipino parentage; a stevedore for Hawaiian Pine and he had been in Hawaiian Pine as a brakeman in the Kahului Railroad Company; and he was in the army; he went to the 8th grade; and he says he has no education—and he is disqualified because he has no high school education and no experience. You don't consider that a disqualification, do you?

A. If he disqualifies himself, we usually do disqualify.

Q. On educational grounds?

A. No, if he disqualifies—if he wants to be disqualified, why—

Q. Who makes the standards of education—the juror [331] or the Commissioners?

A. The Commissioners.

(Testimony of Augustine Pombo.)

Q. You put him on the questionable list. Here is Frederick—middle name, Bibilone—last name, Saranillio; Post Office Box No. 858, Lanai; born, April 8, 1924 in Mt. View, Hawaii.

A. Mountain View.

Q. Mountain View, Hawaii; nationality of parents is Filipino; he is a stevedore; he had been a truck driver; in the army; he had gone to the Mountain View School in Hawaii through the 8th grade; and he says, "Not enough schooling"; and he says he is not disqualified for jury service. Right?

A. That is what he says.

Q. And I see he appears on the questionable list.

A. Questionable.

Q. In regard to these persons, you didn't do anything further than look at the questionnaires and it is also true you didn't call them in?

A. We didn't call them in.

Q. Did you make any other investigation?

A. There is no appropriation for that. The government has no appropriation to send for them.

Q. The question is whether or not you did it or not—not whether or not there is an appropriation.

A. We couldn't send for them—not when you don't have no money to pay for the transportation.

The Court: Can Counsel give for the matter of the record how many questionnaires he found in this Lanai City file of the character that he is questioning about?

Mr. Resner: You mean——

(Testimony of Augustine Pombo.)

The Court: The ones that you were last questioning the witness about.

Mr. Resner: How many there were altogether?

The Court: How many questionnaires returned?

Mr. Resner: Altogether, quite a large file.

The Court: No, I mean of the ones that you found for——

Mr. Resner: Filipinos?

The Court: Yes.

Mr. Resner: We will offer certified copies of the ones that we have used.

The Court: What I want to know for the record at this time, so that anyone can pick it up in a rough way for further check, how many——

Mr. Resner: I am counting. There are seven that I have gone over in the 1st precinct of Lanai City, and that isn't all. I haven't gone through the whole file, Judge—haven't had a chance—and ten in the 19th precinct at Haiku.

The Court: I think we had better take a recess at this time.

(Second Circuit Court recessed at 10:02 a.m.

Reconvened at 10:13, a.m.)

Mr. Resner: For the record here, Mr. Pombo, I want to show you what Defendants' Exhibit 11 in evidence shows. This is the Census for Hawaii in 1940, showing Maui, among other things. And here we see that at that time there were employed in Maui of male workers on all work except public emergency work, 17,657. My finger is at it.

(Testimony of Augustine Pombo.)

Witness: Yes.

Q. And going down the column, we see that of the persons described as farm laborers, wage workers and farm foremen, 8,638 of that total number of employed are in the class of farm workers and foremen.

The Court: Does that indicate that they are citizens?

Mr. Resner: Is that necessary, your Honor?

The Court: That is what the statute requires for qualified jury consideration.

Mr. Resner: If your Honor please, I should like to examine the witness without interruptions.

The Court: I am asking the question so that it may become pertinent to the figures in the record. I am asking you a courteous question, Mr. Resner. Does the figure you read divide as between citizens and non-citizens?

Mr. Resner: No, it is the total labor force. [334]

The Court: I want the record to so show.

Mr. Resner: I don't think there is any question about the record showing that it exists in some evidence.

The Court: It doesn't show from the figures you are reading from unless it specifically appears.

Mr. Resner: It is in the records from yesterday.

Let me show you this, Mr. Pombo, so it appears that approximately half of the labor force is farm labor of Maui County—those employed.

Witness: 8,000?

(Testimony of Augustine Pombo.)

Q. More than 8,000 out of a little more than 17,000.

A. Of farm labor—you mean the plantations?

Q. Farm laborers.

A. They include cane workers as farmers?

Q. Everybody who works on the farm.

A. I don't call it farms. We are not used to it.

We just saw an agriculturist here this morning—in Hawaii, they have never called a sugar plantation a farm.

Q. These are the descriptive terms used by the United States Census.

A. I know. That is the reason I can't get used to hearing it called a farm.

Q. I want to turn for a moment to show you this, too—that in Maui County, according to the 1940 Census, you had a population of 55,950, of whom 32,198 were men. [335]

A. How many of that are citizens?

Q. I am just going over the list, Mr. Pombo—population. The citizens appear in another exhibit. And it appears that of the men at that time, 8,198 were Filipinos.

The Court: Citizens or non-citizens?

Mr. Resner: If your Honor please, I think it is rather clear that what we are giving now is the population as given by the Census.

The Court: Without description as to citizens?

Mr. Resner: Yes. I still think under the Constitution, your Honor, that a person, whether he be citizen or non-citizen, is entitled to equal protection of the laws.

(Testimony of Augustine Pombo.)

And, Mr. Pombo, there are 23,782 females in the population, of whom 2,321 are Filipinos. And all along that line you see the breakdown according to race. In other words, Filipinos constitute the second largest population group in Maui. The largest group is Japanese, of whom there are 12,940 men. Of the——

Witness: That includes alien citizens?

Q. Everybody, Mr. Pombo. And of Hawaiians, there are 1,586 males; of part Hawaiians, there are 3,993 males; caucasians—that includes Portuguese—there are 3,518; of Chinese, there are 809; and all others, there are 1,088—a total of 32,198 men at that time. Now, in selecting this grand jury, Mr. Pombo, were you seeking to get a cross section of the community? [336]

A. What do you mean by “cross section”?

Q. Do you not understand the term?

A. I am not sure.

Q. Well, the Supreme Court said in one of the cases, Mr. Pombo, that in selecting the jury, “Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group matter. That fact lies at the very heart of the jury system. The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, contemplates an impartial jury, drawn from a cross section of the community.”

(Testimony of Augustine Pombo.)

Mr. Crockett: If the Court please, may I ask that Counsel also read the definition given by the Supreme Court in the Thiel case where the Supreme Court also said that a cross section of the community does not mean that each individual social class is included in a cross section, as that term is used by the Supreme Court of the United States.

The Court: In other words, that all particular possible classifications are not necessarily included if it is fairly representative.

Mr. Crockett: That is correct.

Mr. Resner: Now, a cross section, Mr. Pombo, would mean that without intentional exclusion of any particular class or group, that all groups in the community from every walk of life and from every racial group, every religious group and things of that character that the jury is selected from, so that the jury truly reflects the community as a whole. Now, what I am asking you is whether you have selected the jury with that in mind?

Witness: Yes, we have.

Q. Would you say that the jury which excludes from it completely Filipino citizens is representative of the community as a whole?

Mr. Crockett: If the Court please, I ask that that question—I object to the question because it does not refer to the Filipino citizens who are qualified for jury duty.

Mr. Resner: I will put that in.

The Court: I think that Counsel is calling for

(Testimony of Augustine Pombo.)

a legal conclusion in asking this witness to be a substitute on the Bench on the evidence included. That is my job, Mr. Resner, to come to that conclusion as a legal conclusion—and not the witness' speculation. You are at liberty to examine the Jury Commissioner as to any factor of arbitrary action on his part or non-arbitrary action on his part to bring out the facts, and it is up to me to draw the conclusion.

Mr. Resner: I am asking Mr. Pombo—and I think the question was asked by Mr. Crockett of Judge Wirtz yesterday, and allowed—as to whether or not a jury of this character which has on it no Filipinos and on which there has never been a Filipino, is in his judgment in that regard a cross section of the community.

The Court: I am addressing myself to this one question without bringing in or attempting to bring in faulty memory as to other factors of other witnesses. My ruling is on the question you are now putting to this witness.

Mr. Resner: May the witness be allowed to answer the question?

The Court: The objection is sustained.

Mr. Resner: We will take exception.

The Court: The exception is allowed.

Mr. Resner: Now, Mr. Pombo, would you say that a Grand Jury as this one which has on it some 56% haole, as the term is employed in the Territory——

(Testimony of Augustine Pombo.)

Witness: You are wrong—only 17.

Mr. Resner: I am talking about percentage, Mr. Pombo, on the evidence we have submitted. And if our evidence is wrong, we will be corrected in the courts. But I am asking you the question—I am including Portuguese among the—I will rephrase the question and put it this way. Would you say that a Grand Jury which has on it 56% of caucasian is a fair cross section of the community of Maui?

A. In selecting the jury, I didn't consider Portuguese or Hawaiian or haole or—didn't make any difference to me who he was, and the jury that we got—I consider that a good jury.

Q. The question, Mr. Pombo—

A. That represents the entire Island.

Q. That is a cross section of the Island?

A. That should be.

Q. What do you mean by "That should be"?

A. You only allowed to pick a very few men, very few in Grand Jury. One in Lanai from a great big part that you get there—so whatever we picked, we picked them from every precinct, and nearly every precinct, we picking them from all around—and I consider that a good selection.

Q. In other words, 56% of caucasian, you say, is a fair cross section of the community?

A. No, I don't consider a Portuguese a white man. They consider us as niggers here. We are not classed as white men. They don't even class us as caucasians themselves and I told you that yesterday,

(Testimony of Augustine Pombo.)

and I would like to have that included—that Portuguese are not called caucasian.

Q. Don't you consider yourself——

A. I might, but I was taught when a boy that I am not a caucasian. I was a Portuguese and I am going to stick to it and I am proud of it.

Q. Don't you consider yourself, as an anthropological matter, a caucasian? And when I use that term, I mean [340] according to the scientific definition of what are the races of mankind.

Mr. Crockett: We object to the question, if the Court please. After all, this is direct examination by Counsel, and he is not entitled to cross-examine the witness in going into an anthropological question which I submit is entirely extraneous to the record in this whole matter.

The Court: I think we have gone far enough on that. The objection is sustained.

Mr. Resner: I take exception.

The Court: Exception allowed.

Mr. Resner: Now, Mr. Pombo, would you say that a Grand Jury such as this one is, composed of approximately 89% of men in the managerial or owner or clerical class as against a little bit more than 10% who are in the so-called workers' group—would you consider that kind of a Grand Jury a true cross section of and representative of the community?

Mr. Crockett: We object to the question, if the Court please. Again it is calling for the conclusion

(Testimony of Augustine Pombo.)

of the witness; and it doesn't include in it, that happens to be included, and that is the relative educational qualifications of the different people in the different classes.

The Court: The Court will put the sustaining of the objection on the ground that the witness is being asked to usurp the prerogative of the Court in this particular proceeding.

Mr. Resner: I will take exception.

The Court: Exception allowed.

Mr. Resner: How do you explain the fact, Mr. Pombo, that there is not a single farm laborer on the Grand Jury list of 50, and there are some 8,000 farm laborers in Maui?

Witness: Not including—you are including the aliens?

Q. Aliens and citizens.

A. Why don't you stick to citizens so it would be more specific?

Q. There are a substantial number of citizens among the 8,000 farm laborers, Mr. Pombo. There are more citizens among the farm laborers than there are citizens among the so-called management group. How do you explain the fact that there is not a single farm laborer on the Grand Jury list of 50?

A. We don't consider them as farm laborers. We just go through them and pick them out and go into their questionnaires or personally, and if they satisfy the Commissioners that they will make

(Testimony of Augustine Pombo.)

good jurors, we put them on regardless of what their occupation is.

Q. You select the Grand Jury list independently of what the occupations of the jurors are, is that correct? [342]

A. What did you say?

Q. You select the Grand Jury list without regard then to what the occupations of the jurors are?

A. Yes. We don't consider the occupation.

Q. You don't consider the occupation?

A. Well, we don't take that into much consideration.

Q. I see. You select the jury on another basis?

A. On another basis—on their merits.

Q. You select them on the basis, really, of what you call intelligence?

A. Yes.

Q. Good character?

A. Yes.

Q. Education?

A. Yes.

Q. Those are the standards?

A. Yes.

Q. Not so far as race is concerned?

A. That doesn't count with me.

Q. Or business is concerned? Or occupations are concerned? You ignore that in selecting a jury?

A. No, business men and clerk and stuff—I prefer to get them. They make—they really smarter jurors.

Q. I see. And so in selecting the jury, you take into account whether a man is a business man?

A. Not exactly a business man—a fellow can be working for a business man and still may be smarter than his boss. [343]

(Testimony of Augustine Pombo.)

Q. You say that a man who is in a high clerical position——

A. Our business here all small—very few big ones—the plantations.

Q. I understand that, but what you are saying is that when a man is working with a business or has some kind of executive job, that to you that means he is better qualified.

A. He usually does.

Q. Than a man who works with his hands?

A. He usually is better qualified.

Q. That's right. That is what you are saying.

A. That is what I am saying.

Q. Then as I understand you, you take into account that qualification in selecting a juror; but if a man is a worker, then you don't consider that.

A. Oh, no, you are wrong.

Q. I beg your pardon? Isn't that what you said? Don't you pick——

A. What do you mean by worker?

Q. Somebody who works on the plantations or canneries.

A. I have a lot of plantation men on the jury now.

Q. I am talking about the wage earner, the wage worker, the daily wage worker. You know what that is?

A. I guess I do.

Q. The man who works by the hour.

A. Lots of them work by the hour. [344]

Q. You know what I mean by wage worker?

(Testimony of Augustine Pombo.)

A. Yes, I know. The per diem worker that gets paid by the hour.

Q. Somebody who works in the cannery or sugar plantations or canneries, pineapple fields—that is what we mean by wage earner.

A. We considered the men in the canneries.

Q. What I am getting at is in picking this jury, was it important to you whether or not the jurors had that kind of job? You disregarded that?

A. Doesn't make any difference to me what kind of job he has.

Q. Did you disregard or take into account a man's job in putting him on the jury?

A. I prefer to have experience on the Grand Jury. I would like to have a clerk—somebody that is familiar with paper work.

Q. Yes.

A. Somebody that has got—usually got a good education to be in an office.

Q. Yes.

A. He makes a better juror than the man that is not doing any office work.

Q. And what caused you to come to that conclusion?

A. My experience as a juror myself, sitting on the jury.

Q. In other words, you think business people make better jurors than ordinary laborers? [345]

A. Yes, I do.

Q. And so in selecting a jury, you kept in mind

(Testimony of Augustine Pombo.)

that standard rather than the standard of getting people from all kinds of trades and occupations?

A. We have them from all kinds of trades and occupations now.

Q. The question is this—in selecting this jury, what you particularly kept in mind was getting on the jury business people, managers or clerical people or supervisory people. You favored those on the jury.

A. We have all kinds of men on the jury.

Q. Rather than those who worked in the fields and canneries.

Mr. Crockett: Just a moment. If the Court please, I object to the question. It has already been asked and answered. Mr. Pombo has stated repeatedly that they did not make a man's occupation the controlling factor in making their selection, and it has been answered dozens of times here, and Counsel goes over the same question over and over again.

Mr. Resner: I don't think so. May I finish the question?

The Court: The objection is sustained, and also the Court adds because Counsel is with clever questions putting words into the witness' mouth that the witness is obviously himself incapable of putting in that form, and therefore makes a leading question for [346] the purpose of making a point in Counsel's own favor—and he is Counsel's witness.

Mr. Resner: If your Honor please, I most respectfully except to the Court's statement and indi-

(Testimony of Augustine Pombo.)

cate to the Court that it shows on the part of the Court a bias and prejudice against these defendants and an unfairness in these proceedings.

The Court: I am addressing myself to the conduct of Counsel. As far as I am concerned, the defendants are innocent at this stage of the proceeding before me. I am addressing myself to the cleverness of Counsel.

Mr. Resner: I don't think the comment was necessary, if the Court please and I take exception.

The Court: I want your exception in the record, alongside of my comment on your question.

Mr. Resner: I think it rather remarkable that in a County where there are 8,000 farm laborers, there is not one on the jury list.

The Court: I have ruled, Mr. Resner, and please—no more remarks in connection therewith after ruling. Note your exception and proceed.

Mr. Resner: I do require and I think we are entitled to a fair hearing.

The Court: You are getting it.

Mr. Resner: I doubt it.

You have used, year after year, Mr. Pombo, a number of jurors on the Grand Jury list. [347]

Witness: Yes, we have.

Q. Consecutive terms.

A. Yes, we have.

Q. And why has that been done?

A. The law permitted us to use these jurors that were selected on the panel but don't serve.

(Testimony of Augustine Pombo.)

These men that don't serve, we continued on—continued them on for the next year's panel.

Q. I see. Did you consider them qualified because of prior experience?

A. What do you mean? The men who were on the list?

Q. The men that you continued on service year after year.

A. It saved us a lot of work—already selected, already considered—and we just carry them on in the next term.

Q. It made it easier that way, is that it?

A. The law allowed us to do that.

Q. And it made the Commissioners' work easier in that regard to get a jury? A. Sure it did.

Mr. Resner: That completes the examination of Mr. Pombo at this point.

Mr. Crockett: If the Court please, at this time may the record show that the list of questionnaires which were referred to in the examination of this witness by Counsel, and particularly the tabulation of the returns of those questionnaires as [348] were referred to and identified by Judge Wirtz when he was a witness on the stand—that it appears that of the questionnaires examined, 50 persons were included on the qualified list and 59 on the questionable list. There are listed as exempt, 30 persons; and listed as not qualified, 49 persons; and out of the jurisdiction, eight persons; and in the army, three persons; deceased, one; and no questionnaires

(Testimony of Augustine Pombo.)

returned, 13. Might I amend my offer to say that it refers to the 19th precinct instead of the 1st.

The Court: 19th precinct located where?

Mr. Crockett: Haiku. And that in order that it might be in the same portion of our transcript, that the records of the court further show that the grand jurors listed by the Commissioners from the 19th precinct were Walter Holt and Edwin K. Muroki.

And may the record further show that from the questionnaires of the 1st precinct, located at Lanai City, the tabulation of the questionnaires returned show that 94 persons were placed on the qualified list; 87 were on the questionable list; exempt, 60; out of the jurisdiction, 48; in the army, 9;—the heading is “Temporarily Out of the Jurisdiction”—9; deceased, two; and questionnaires not received, 20. And that the records heretofore introduced in evidence show [349] that the Commissioners listed as grand jurors from the 1st precinct, Lanai, David P. Eldredge and Toshio Onuma.

We have no questions from this witness.

(Witness excused.)

Mr. Resner: Will you call Mr. Chatterton, then.

CLAUDE E. CHATTERTON

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Please state your full name.

Witness: Claude E. Chatterton.

Mr. Resner: Would you state your full name, please?

Witness: Claude Ellsworth Chatterton.

Q. And your address, Mr. Chatterton?

A. I live in Kula. My Post Office Box is 145, Kahului.

Q. And your business?

A. I am assistant manager of Kahului Store.

Q. Who is the owner of that store, Mr. Chatterton?

A. The Hawaiian Commercial and Sugar Company.

Q. What is your political registration by party?

A. Does that—is that a question that has any bearing? [350]

Q. Yes, it is. A. I am a republican.

Q. The statute requires that one of the Jury Commissioners be a republican and the other a democrat? A. I agree with that.

Q. I wanted to see whether there were two democrats on the Commission. Now, Mr. Chatterton, how long have you been a Jury Commissioner?

A. Since I received my first appointment from Judge Wirtz in 1945.

(Testimony of Claude E. Chatterton.)

Q. So you have served two terms?

A. I have served two terms?

Q. And this is the third term?

A. The third term is coming up. We have picked two jury lists.

Q. You participated in the work that resulted in the selection of the 1947 Grand Jury list?

A. I did.

Q. Out of which the array of 21, or, 23 names was chosen?

A. You mean the 23 jurors chosen from the list?

Q. It is called the array, as gathered here, or the active Grand Jury.

A. That's right.

Q. That does the work. Now, as I understand it, you selected 50 names on the list. [351]

A. Yes.

Q. You met from time to time, did you, in 1946 to select the names?

A. That's right.

Q. Now, are you familiar with what the statute says with regard to the qualifications of jurors?

A. I am.

Q. One of those is that a person be intelligent. What do you understand that to mean?

A. That is a very obvious question. You can tell whether a man is intelligent or not, and one of the reasons is by the work that he does.

Q. I wonder if you would explain that a bit more, Mr. Chatterton.

A. I don't consider it needs any further explanation.

(Testimony of Claude E. Chatterton.)

Q. Well, when you say that you determine a man's intelligence by the work that he does——

A. That is one of the reasons, yes.

Q. What does that mean to you?

A. It means that he has average intelligence and that he has not necessarily gone through any particular grade in school. He might not have gone to grammar school; he might have had an education at home.

Q. Do you associate intelligence with certain kinds of work more than with other kinds of work?

A. Not necessarily.

Q. I am still at a loss to understand what you mean by intelligence as determined by the kind of work a man does. Can you enlarge upon that?

A. Whether he has a trusted position with the firm that he is employed by.

Q. Yes.

A. Or—there are different positions which require different amount of intelligence.

Q. I see. Well, is it your thought that if a person holds an executive position or a supervisory position, let's say, in business of some kind, that chances are that that man would be more intelligent than someone who works by the hour, let's say?

A. Perhaps so. Perhaps not. Not necessarily—not all jobs are held on merit, Mr. Resner.

Q. Yes, I understand that, too. But what I am getting at is what kind of work it is that you associate intelligence with.

A. Any job.

(Testimony of Claude E. Chatterton.)

Q. Do you think that a person is likely to be as intelligent if he is a farm laborer as if he holds the position of manager of a railroad with respect to jury service? A. Could possibly be. [353]

Q. Well, in your opinion where do you think the probabilities lay? A. I couldn't say.

Q. What standard did you use then in fixing intelligence in selecting the jury list of 50?

A. Used whether they—personal knowledge of the persons to whom the application was sent—from long experience on the Island. Mr. Pombo stated he has been here—born and raised here. I haven't been born and raised here, but been here 30 years and know more or less the entire community with the exception of outlying districts. Those were the districts we put the first questionnaires out to.

Q. Would you say that other things being equal that you selected the jurors from amongst the people that you knew personally? A. No, sir.

Q. Did that have anything to do with the selection—whether you had personal knowledge?

A. Not to my mind, it did not.

Q. If you knew one man personally and not another, would you select the man you knew personally?

A. Perhaps we might—I can't answer that yes or no.

Q. Well, now, could you go over the list of 50 and tell us those whom you know personally?

A. Yes, I can.

(Testimony of Claude E. Chatterton.)

Q. I hand you the Court's exhibit, a certified list. This is the Court's list. It is in evidence here, [354] Mr. Chatterton. You see the first name is Mr. Eldredge. Do you know him? A. I know him.

Q. How long have you known Mr. Eldredge?

A. I have known him probably for 15 years—not personally, but I know the family. I know where he was born, where he has worked, but he is not a personal friend of mine.

Q. Was that a consideration in selecting him as a juror—your knowledge of him?

A. That and the work that he does and the reputation that he has in the community.

Q. What is the work that he does?

A. I believe he is personnel—assistant personnel director of Hawaiian Pine, and before that he was working in the personnel and athletic department of Pioneer Mill Company.

Q. And that indicated to you a qualification?

A. Not only that, but he has had past jury experience—jury service, which he performed very well.

Q. Next, is Mr. Toshio Onuma.

A. That person, I do not know.

Q. Next, Alfred S. Burns.

A. I know Mr. Burns.

Q. Have you known him long?

A. I have known him and have a speaking acquaintance with him for probably 15 or 20 years.

Q. And what caused you to put Mr. Burns on the list? A. I can't recall at present.

(Testimony of Claude E. Chatterton.)

Q. Did his work have anything to do with it?

A. No, sir.

Q. How did you determine that he was intelligent?

A. Well, for a matter of education, for one thing.

Q. Yes.

A. And the fact that he has the reputation in the community of being a reliable person.

Q. Mr. Correia—do you know him?

A. I didn't know Mr. Correia until I saw him yesterday morning.

Q. Mr. Roy Tatsumi Ito?

A. Same applies to him.

Q. Mr. Edward S. Bowmer?

A. I know Mr. Bowmer.

Q. How long have you known him?

A. I think—well, since he came to the Island of Maui. I don't know exactly how many years that is, but he was formerly with the Wailuku Sugar Company. Since he moved to Lahaina, I haven't had much contact.

Q. Now, he is cashier?

A. He holds an office at Baldwin Packers, I know that.

Q. On what basis did you put him on the list?

A. As I recall it, it was from standing in the community and past jury service.

Q. Mr. Burns is also employed as superintendent at Baldwin, isn't he? A. Yes.

(Testimony of Claude E. Chatterton.)

Q. How about Mr. Ralph Cornwell? Do you know him?

A. I just know him when I see him. I don't know him to speak to. [356]

Q. Mr. Yong Kam Chew?

A. I know Mr. Yong Kam Chew.

Q. How long have you known him?

A. For about 20 years.

Q. Do you know what he does?

A. He runs his own store in Lahaina.

Q. What caused you to put him on the list?

A. Most precincts we endeavor to scatter the—our choices for—by trying to get Chinese. If there happened to be four, we would try to take one Japanese, one Chinese, one Portuguese and one—what you might call haole.

Q. In other words, you tried to divide it according to race?

A. Not in all cases, but we try to make a fair distribution.

Q. How do you account for the fact that there are no Filipinos on this list?

A. Well, in a lot of cases the number of Filipinos that you questioned Mr. Pombo about, Mr. Resner—there is a number of Filipinos who have reached the voting age are still in the army—or service. They have had no chance to ever be picked on a jury except in this one particular term. There are a number of them, I know.

Q. I might point out to you at this time, Mr.

(Testimony of Claude E. Chatterton.)

Chatterton, that in 1946, according to Exhibit 17, the list of registered voters on November 5th, 1946

A. May I make the suggestion that the 1946——

Q. That there were 103 Filipinos registered to vote and you didn't complete your list until December 11th, 1946.

A. But, Mr. Resner, that 1946 tabulation was not released in time for us to use it. We picked the jury list from the 1944 list, as Mr. Pombo has already told you.

Q. Were there Filipinos registered in 1944?

A. There probably were.

Q. Do you know of any Filipino that has ever served on the Grand Jury in Maui County?

A. I am not familiar with the Grand Jury prior to 1945.

Q. In your experience, has there been a Filipino on the Grand Jury list?

A. Not in the two terms that I have served. I don't have the 1946 list with me, so I couldn't say. I don't believe there is a Filipino on the present Grand Jury list.

Q. Now, Mr. Ray M. Allen—do you know him?

A. I do.

Q. And he is the manager of the Wailuku Sugar Company?

A. That's right.

Q. And how long have you known him?

A. I have known him for about 15 years, I imagine, or more.

(Testimony of Claude E. Chatterton.)

Q. Did your personal knowledge of him cause you to think he was a suitable juror? [358]

A. It did.

Q. Anything else that caused you to think he was a suitable juror?

A. One thing—that I believe every man should be a juror sometime or other. I will go with you on that, and I don't—to my knowledge, Mr. Allen has never been on during my term, and the fact that he was the manager of the plantation had no bearing whatsoever on that. But one thing I would point out to you, Mr. Resner, is that the top man managerial jobs have very rarely been picked on a jury.

Q. The second group?

A. Not the second, necessarily.

Q. Mainly? A. No.

Q. What group has been picked?

A. Been picked pretty well from all groups.

Q. Perhaps you can explain this to me—how did it happen that there is not a single farm laborer on this jury list?

A. I believe your statement is slightly wrong.

Q. Who are the farm laborers?

A. Well, there is one of the grand jurors who is present in the court room right now—Mr. Charlie Thompson, who is a rancher and a farmer and he does his own work.

Q. I am talking about—when I use that term, Mr. Chatterton, I am talking about a person who

(Testimony of Claude E. Chatterton.)

works [359] by the hour or by the day for some entrepreneurial as a farm laborer.

A. I see. I don't believe there are any. There are many on that list who are—work by the hour.

Q. I am talking about the people who work in the fields or in the canneries or in the sugar mills as day laborers. Do you know of any of those on the list?

A. Mau Hin is a machinist. He works in the mill.

Q. You don't consider a machinist—you don't consider a machinist as a farm laborer?

A. No, but he works in the mill. That is your statement.

Q. As a farm laborer?

A. No, farm laborers don't work in mills—nor do they work in canneries.

Q. What do you consider them on the list?

A. I consider them craftsmen, farmers, carpenters—whatever have you—they are tradesmen.

Q. Do you know Mr. Wai Ken Tom?

A. I do.

Q. What does he do?

A. I believe he is bookkeeper for the Maui Mutual Telephone Company.

Q. How long have you known him?

A. Practically the same years as the others—15 or 20 years—ever since he has been a small boy.

Q. And what caused you to put him on the list? [360]

(Testimony of Claude E. Chatterton.)

A. One of the main things is because I think he would make a good jurymen, better than average intelligence, had a good education, good reputation in the community.

Q. What about Mr. Ezell?

A. Mr. Ezell I know personally.

Q. How long have you known him?

A. First time I met Mr. Ezell was just a few days after Pearl Harbor when he was working for the USED, and he left the Island and returned here about a year ago.

Q. And what did you consider as a basis for putting him on the jury?

A. Same reasons—intelligence, standing in the community.

Q. Do you know Mr. Louis Sequeira?

A. I do.

Q. How long have you known him?

A. Twenty-five years.

Q. What caused you to put him on the list?

A. Because I believe he is a good man.

Q. I beg your pardon?

A. Because I believe he is a good man.

Q. What do you mean by the expression, "good," Mr. Chatterton?

A. Standing in the community, reputation among business men, business methods. I think that is sufficient. [361]

Q. Now, Mr. Sequeira is Portuguese by extraction?

A. Portuguese, yes.

(Testimony of Claude E. Chatterton.)

Q. And is he considered, in your judgment, as a caucasian or non-caucasian?

A. In my estimation, he is a caucasian.

Q. In the estimation of the community, is he considered caucasian or non-caucasian?

A. I couldn't say.

Q. Is there any reason why you could not say?

A. No.

Q. Mr. Winford W. Percy, do you know him?

A. I do.

Q. How long?

A. Well, I should say about five years.

Q. What does he do?

A. He manages the Maui Appliance Company—handles different appliances.

Q. What caused you to put him on the list?

A. Well, one thing is that I believe Mr. Percy is a very smart man, and, as I say, good business standing—and another thing is that in many cases lot of these people have more time to go on jury service.

Q. More time than whom?

A. Well, men who hold important jobs in many places where they cannot be let off. In many cases, tradesmen and craftsmen of different—

Q. In other words, people who can't get off?

A. Conditions here in the Territory are a little different than on the Mainland. We have our seasonal work here where with some men it is absolutely necessary that they stay on their jobs.

(Testimony of Claude E. Chatterton.)

Q. Who is included in that?

A. Mainly tradesmen and operatives in——

Q. People in executive positions?

A. Not necessarily.

Q. In connection with what you call seasonal work, who is more essential—those in executive positions or those who are people who work in the fields?

A. Well, I would say about fifty-fifty. Executives got to be there to direct the work, and operators of machines have to be there to operate the machines.

The Court: Mr. Resner, if there is no objection, we will take a recess.

(Second Circuit Court recessed at 11:00 a.m.
and reconvened at 11:10 a.m.)

Mr. Resner: Mr. Chatterton, do you know the juror, Nakamoto? No. 14?

Witness: I don't—I know him, yes.

Q. How long have you known him?

A. I have known who he is for a long time—probably ten or twelve years.

Q. What does he do?

A. I know him as a fisherman, but I think he has some connection with some market. [363]

Q. What caused you to put him on the list?

A. Well, he has a good standing in the community and is a qualified man.

Q. You mean qualified on the basis——?

A. Qualified juror—that is, a citizen and a voter.

(Testimony of Claude E. Chatterton.)

Q. Now, with regard to Mr. Maeda, do you know him? A. I do.

Q. How long have you known him?

A. About two or three years.

Q. His business?

A. I believe he is a public accountant.

Q. And what caused you to put him on the list?

A. The same reason as Nakamoto. He has a reputation of being a very smart boy—good standing in the community and is a qualified juror.

Q. Mr. Trask—how long have you known him?

A. I have known him 30 years.

Q. What does he do?

A. He is cashier in the Bank of Hawaii, Paia branch.

Q. In Wailuku? A. Paia.

Q. What caused you to put him on the list?

A. Well, he is an intelligent man, a qualified juror.

Q. When you use the word, “qualified” you mean according to citizenship?

A. I mean according to the requirements of a juror. He meets all requirements.

Q. With regard to Mr. Rezens—do you know him? [364]

A. I know him, yes. I have known who he is for—ever since he has been a small boy.

Q. I see. What caused you to put him on the list?

A. Well, I believe his questionnaire qualified him as a juror.

(Testimony of Claude E. Chatterton.)

Q. What about Mr. Ayers?

A. Mr. Ayers—I do not know.

Q. What standard of education to your mind was sufficient to qualify a person as a juror on the Grand Jury list?

A. Well, there was not any particular standard. A man might have only been three or four years in grade school and still be a qualified juror.

Q. Yes.

A. And the answers that he made on his questionnaire had some bearing on it, and personal knowledge that we pick up. In a small community like this, you more or less hear a lot of things about different people, and as Mr. Pombo said, we never dreamed it necessary to—not having the funds to do it—to call witnesses or prospective jurors in to question them. But we did do a lot of questioning ourselves on our own time.

Q. You mean you went around and saw people?

A. That's right—just in the community. When you go around, you talk to so and so. He will say, "I know Mr. Ayers, I know Mr. whoever it is; and you [365] ask him if he knows him and he says yes.

Q. You didn't have those funds to call in prospective jurors whose questionnaires appeared to show them qualified. Therefore, did you select those whom you knew as against those you didn't know?

A. Not the way I saw it, no.

Q. How do you explain the fact——?

A. Because you could take 150 men on this

(Testimony of Claude E. Chatterton.)

list and I believe I would know them all, practically. I know 90% of the men on both the trial and grand jury list.

Q. I understand that. How many of the people of the registered voters en masse in the County—and I think there are something around 6,500—do you know?

A. That would take a long time to go over them one by one.

Q. There were 6,572 registered voters on November 6th, 1946, on all three Islands. What would you say is the percentage of those people that you know personally? A. I couldn't say.

Q. Would you know as many as 90% of them?

A. Oh, no.

Q. You did say you knew 90% of the people on the list.

A. In the lower districts, more populated districts. In the outlying districts, I know very few.

Q. With regard to Mr. Haygood, how long have you known him? A. About two years. [366]

Q. How long have you known him?

A. About two years.

Q. What does he do?

A. He is manager of the Maui Soda and Coca-Cola Bottling Works.

Q. What qualified him in your opinion?

A. Well, the fact that he is a man I considered above average intelligence—met the requirements necessary.

(Testimony of Claude E. Chatterton.)

Q. Do you know Mr. Saka?

A. I don't know Mr. Saka personally. I know who he is and I have business dealings with him over the telephone at times.

Q. Did you consider him qualified?

A. I do.

Q. What about Mr. Fredholm?

A. Mr. Fredholm I have known for—ever since he has been a small boy.

Q. And his business is what?

A. He is superintendent of the Kahului Railroad trucking department.

Q. What qualified him in your judgment?

A. Well, he gets around the country quite a lot and knows the community pretty well, even though he is only a youngster, and he has better than average qualifications as a juror.

Q. What about Mr. Peterson?

A. Mr. Peterson—I work with Mr. Peterson. He is [367] manager of our Puunene Store. The Puunene Store, I might say, is a branch store of the main Kahului Store.

Q. Of the H. C. & S.?

A. Of the H. C. & S. Company.

Q. How long have you known him?

A. I have known Mr. Peterson about ten years.

Q. And what caused you to consider him qualified?

A. Well, he is a very prominent citizen who is very well thought of in the community, does a lot

(Testimony of Claude E. Chatterton.)

of community work and has contact with all walks of life.

Q. What about Mr. Manuel De Ponte?

A. Mr. De Ponte—I know him. I know him personally. He works for the Kahului Railroad Company. He is in the Personnel Department, I believe, and one of the main reasons that Mr. De Ponte was put on is that he has had a lot of jury experience and is a very good juror.

Q. What about Mr. Broadbent?

A. Mr. Broadbent is one of the assistant managers of the Hawaiian Commercial and Sugar Company. I know him personally, and I consider——

Q. How long?

A. I should say about 15 or 18 years. I have known him ever since he has been on the H. C. & S. Company plantation. I consider that Mr. Broadbent is a very fair-minded person, a very intelligent man, and entirely qualified as a juror. [368]

Q. Now, the next one is the one who was injured in the war.

A. Mac Ajifu. I knew him before he went into the service, and as Judge Wirtz—he was the one who said that he was—he would be a good man to serve on the jury because he is a very smart Japanese boy and more or less had no connections with the, as you call them, management and plantation interests.

Q. Did you take that into account as one of the factors in selecting this jury?

(Testimony of Claude E. Chatterton.)

A. I did, yes.

Q. Now, what about Mr. Alu?

A. Mr. Alu is—I just know him to speak to—that's all. I know he is a mechanic in the machine shop, H. C. & S.

Q. Mr. Costa? A. I know Mr. Costa.

Q. How long have you known Mr. Costa?

A. Oh, I would say about 15 years.

Q. And what is his business?

A. He is an electrician in charge of the power plant at H. C. & S. Company mill.

Q. What qualified him?

A. Well, a man who has a very good reputation in the community. The three Commissioners agreed that they believed he would make a good juror.

Q. And is he the superintendent? [369]

A. I don't know what the title is, but he is directly in charge of that power plant which has the—mill plant.

Q. Do you know Mr. Fleming? A. I do.

Q. He is manager of Shell Oil?

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Fleming about—I believe since he has been on the Island which is about four years, I believe.

Q. What qualified him?

A. Well, that again was an effort that the Jury Commissioners made to put someone on the list as far as possible who had no direct connections with

(Testimony of Claude E. Chatterton.)

any of the larger corporations, and he is a man of more than average intelligence.

Q. Mr. Elmore is the automobile man?

A. That's right.

Q. And have you known him long?

A. I do. I have known him—I didn't have much contact for many years, but I first knew Mr. Elmore in 1918 in the first World War training camp at Schofield Barracks.

Q. You have known him many years?

A. Yes.

Q. What qualified him?

A. I consider Mr. Elmore as one of our outstanding [370] business men, and I believe that the entire community considers him as such, and as such, he would be a very qualified juror.

Q. Now, Mr. Waterhouse—do you know him?

A. I know Mr. Waterhouse.

Q. How long have you known him?

A. I should say about ten years.

Q. What position does he hold?

A. I thought he was the agriculturist at Maui Agricultural Company, but I understand he is irrigation manager there.

Q. Yes. And what qualified him?

A. He is a young man of very reliable character and met all the qualifications necessary as a juror.

Q. Mr. Feiteira?

A. Mr. Feiteira I have known for probably 20 years.

(Testimony of Claude E. Chatterton.)

Q. And his business?

A. I didn't know until yesterday, but I believe he is head timekeeper at the Maui Agricultural Company. He formerly worked as a buyer at the warehouse.

Q. And what qualified him?

A. I believe Manuel Feiteira has had quite a bit of experience as a juror and knows the community and the conditions in the district in which he lives very well, and is very highly respected member of the Portuguese race.

Q. Did you think it appropriate that there would be representatives of the Portuguese race on the Grand Jury? [371]

A. No, that had no bearing whatever on the selection.

Q. The fact that you made that comment now—wouldn't that indicate that you thought there should be representatives of all racial groups on the Grand Jury?

A. Not necessarily.

Q. You didn't think that?

A. No. He was not put on for that reason whatever.

Q. Was this jury sworn, then, without regard to whether or not all races were represented?

A. Yes, I believe it was.

Q. Race wasn't taken into account?

A. During your first day's testimony when you had your expert from Washington, Mr. Oshima, here, you went into a lot of detailed figures and

(Testimony of Claude E. Chatterton.)

percentages and so forth. The percentage of any one particular man picked on a jury of 50 out of 13,000 qualified jurors is quite a bit of percentage there, too, Mr. Resner.

Q. Yes, but what I am getting at is this—in picking the jury—what I am trying to find out from you, Mr. Chatterton, is whether you Commissioners set up as an indicated fact that you ought to have on the jury representatives of all the different races on the Island.

A. I will go definitely on record that we did not.

Q. You did not. You recognize, don't you, Mr. Chatterton, that this is one of the unusual places in the world where there is a wide variety of races? [372]

A. That is quite right.

Q. In a rather small area. That is correct, isn't it?

A. We did our best to have a competent jury picked. That was our main purpose.

Q. Now, then, with regard to Mr. Moodie—do you know him?

A. I do. Mr. Moodie is manager of Paia Store.

Q. Who owns that?

A. Maui Agricultural Company.

Q. And how long have you known him?

A. I have known Mr. Moodie for I think—I believe he came here about 1936. I have known him ever since he came here.

(Testimony of Claude E. Chatterton.)

Q. What qualified him?

A. The fact that he is one of the prominent business *men* in Paia and what I consider more than average intelligence—meets the qualifications of a juror.

Q. What about Mr. Bruce?

A. I know Mr. Bruce.

Q. How long have you known him?

A. About ten or twelve years.

Q. And he is the manager of the East Maui Irrigation Company?

A. I believe that is his title.

Q. Do you know with what East Maui Irrigation Company is connected?

A. East Maui Irrigation Company is connected with Maui Agricultural Company and the Hawaiian Commercial [373] and Sugar Company, as I understand it.

Q. Are those connected with Alexander & Baldwin?

A. They are.

Q. Do you know Mr. Bruce's qualifications for jury service?

A. Well, he met all qualifications as a juror as listed in the statutes.

Q. Is that the basis on which he was selected—or anything special about him?

A. Nothing special. I don't believe—I don't know, but I don't believe Mr. Bruce has had any recent jury service—not during my time at least.

Q. How long have you known Mr. English?

(Testimony of Claude E. Chatterton.)

A. Mr. English—ever since I came to Maui. That was in 1916.

Q. What does he do?

A. He is head of the automobile—garage department at the Maui Agricultural Company.

Q. And what qualified him for jury duty?

A. The fact that we considered that he was a good citizen—met the qualifications necessary.

Q. What about Mr. Gottlieb Coleman?

A. I don't know Mr. Coleman very well. Just know who he is.

Q. Who is he?

A. He is one of the persons that you had on your list, Mr. Resner, as a caucasian—which I would correct. Mr. Coleman is not a caucasian. He is a [374] part Hawaiian. The fact that he graduated from Kamehameha School signifies to that effect because in the Kamehameha School, you must have Hawaiian blood. I believe that Mr. Oshima read that name off from his cards that he had. That would bring your percentage down slightly.

Q. Now, what does he do, did you say?

A. I didn't know until I heard yesterday. He is in the tractor department. I don't know what he does.

Q. Tractor department where?

A. Maui Agricultural Company. I know he works for Maui Agricultural Company.

Q. What about Mr. Nunes?

(Testimony of Claude E. Chatterton.)

A. Mr. Nunes I have known for many years. He is superintendent of the East Maui county work.

Q. County official or employee?

A. I believe he is, yes. He is—if that is the Nunes, I know him as “Mundo”. Mr. Crockett probably knows. Edmund Nunes is “Mundo”?

Mr. Crockett: That is correct, if the Court please. He is normally known as “Mundo” Nunes.

Mr. Resner: What qualified him, Mr. Chatterton?

Witness: The fact that I believe he is a very upstanding citizen and met the qualifications as a juror.

Q. How long have you known Mr. Richard Baldwin?

A. I have known Mr. Richard Baldwin personally for probably 15 years. [375]

Q. And his ranch is what?

A. Haleakala Ranch.

Q. What qualified Mr. Baldwin?

A. Well, in the up-country district there where the Haleakala Ranch is located, Mr. Baldwin is very well thought of, and is one of the leaders of the community. And we deemed that he would make a good juror.

Q. How long have you known Mr. Tam?

A. I don't know Mr. Tam. I wouldn't know him if I passed him on the street.

Q. He is a farmer? A. He is a farmer.

Q. Mr. Holt—how long have you known him?

(Testimony of Claude E. Chatterton.)

A. I have known Mr. Holt probably twelve years.

Q. He is a forester for the Board of Agriculture?
A. That's right.

Q. What qualified him?

A. I believe Mr. Holt to be one of the outstanding young Hawaiian boys in the community and I think he would make a good juror, and the fact that he works for the Board of Agriculture and Forestry had no bearing upon his selection. Although he is an employee of the Territorial government, he claimed no exemption.

Q. What about Mr. Muroki? How long have you known him?

A. I don't know Mr. Muroki.

Q. He is a store keeper at Libby. [376]

A. Yes.

Q. How long have you known Mr. Plunkett?

A. Don't know him personally.

Q. You know him as a foreman of the East Maui Irrigation Company?

A. Yes, and the only way I know Mr. Plunkett is through his political activity.

Q. He ran for office?

A. He ran for office several times.

Q. And what qualified Mr. Plunkett?

A. Well, in the East Maui district, over in the area past Keanae, Mr. Resner, the selection of jury material is very limited and it may possibly be that Mr. Plunkett has appeared on the jury lists oftener than it would seem natural, but he is one of the few qualified jurors in that area.

(Testimony of Claude E. Chatterton.)

Q. You are talking about the 21st precinct—Keanae?

A. 21st, 23rd—all those precincts from—I might say east of Keanae—from Keanae east. We did our best. In many cases lot of the small precincts did not really have enough registration to entitle them to a representation on the Grand Jury.

Q. There are 64.

A. That would just about qualify them for one—either trial or grand juror, because we base that—I made the figures up myself—based on the total registration. I forgot what it was, but I think 66 voters entitled the district to one representative [377] on the jury—the trial or grand.

Q. 65 male voters in 1946.

A. I think the figures are somewhere in Judge Wirtz's file. We figured them on a percentage basis—trying to get every precinct represented.

Q. Mr. Simpson is vice-president of the Hana Ranch?

A. I only know Mr. Simpson by sight.

Q. What is his qualification?

A. The same fact that you might say applies to Mr. Plunkett. The jury material in Hana is limited, and we figured that Mr. Simpson met all the qualifications and was above average intelligence.

Q. There are about 150 male voters there.

A. Yes. You would be surprised at the few, I believe, who are qualified.

Q. Let me ask you this—in determining the

(Testimony of Claude E. Chatterton.)

number of grand jurors according to the number of voters in a particular precinct, was it according to male voters or all voters, male and female?

A. It was according to the male list, I believe. Anyway, there was some 6,000, I believe.

Q. 6,728 in the November 5th, 1946 election.

A. Of course, we did it on 1944, but it was approximately the same figure—that is, of the male vote.

Q. Did you use the questionnaires for years before 1946, or did you use the questionnaires for the year 1946?

A. Where questionnaires—all the voters in these outside [378] precincts—I forget how many—was it 19? I forget the exact number—the ones you went over yesterday with Judge Wirtz. Every registered voter was sent questionnaires in 1946. Any of those who failed to return a questionnaire, we went through the old files, and if we found them, we would refer to the old one. And there were very few, I might say.

Q. How long have you known Mr. Edward Baldwin?

A. I have known Mr. Edward Baldwin for over 20 years.

Q. He also runs a ranch in the same general vicinity?

A. Yes, Ulupalakua Ranch.

Q. What is his qualification?

A. I consider Mr. Baldwin to be outstanding

(Testimony of Claude E. Chatterton.)

in his community and way above average intelligence, and to meet the requirements of a juror.

Q. How long have you known Mr. Fong?

A. I have known Mr. Fong about 20 years.

Q. He is a contractor now?

A. I don't know what you would call him. He has so many varied interests. He has stores and everything else, but I think he himself devotes most of his time to contracting.

Q. What is his qualification?

A. Well, in Kookeo—that is part of Kula—he is one of the outstanding citizens. He gets around all [379] over the Island and knows many people.

Q. What about Mr. Goodness?

A. Mr. Goodness, I do not know.

Q. How long have you known Mr. Thompson?

A. I have known Mr. Thompson ever since I have been in the Territory—thirty years.

Q. Do you know his business?

A. He is a rancher.

Q. On his own account?

A. On his own account, I believe.

Q. And what qualified him?

A. I think that Charlie Thompson's judgment as a juror is among the highest here. He has had plenty of experience and while he is over age, he did not claim exemption.

Q. How long have you know Mr. Friel?

A. I do not know Mr. Friel at all.

Q. How long have you known Mr. Morris?

(Testimony of Claude E. Chatterton.)

A. I knew Mr. Morris many years ago when he was on the Island of Maui. Since he moved to Molokai, I have no contact with him.

Q. What qualified him?

A. I believe that Charlie Morris is one of Molokai's outstanding citizens, and his qualifications met with the requirements of the Commissioners.

Q. Mr. Auld—how long have you known Mr. Auld?

A. Mr. Auld, by name only—and same thing with Mr. Reinhart. [380]

Q. Only by name? A. That is all.

Q. Let me ask you this—in picking this jury, did you try to get a cross section of the community, Mr. Chatterton?

A. Well—same question comes out—what you figure a cross section and what I figure a cross section——.

Q. Well, I think that is a good point. What do you consider a cross section to be?

A. We consider—in my estimation, the 1947 jury panel is the best jury panel that has ever been picked in the history of this Island.

Q. Let me ask you what you consider a fair cross-section to be. What standard did you employ to select a fair cross section of the community of Maui?

A. We used no standard.

Q. No standard? A. No set standard, no.

Q. Did you try to get into the Grand Jury without excluding from it, for example, representatives of the farm labor group?

(Testimony of Claude E. Chatterton.)

A. Mr. Resner, you take your District No. 1. You say they have three hundred and some odd voters, of whom maybe 200 are qualified. We did not go over the entire 200 names. We went down the list until we obtained the number of jurors that that district was entitled to. I might add that the chances of a man being picked on a jury is very remote. I was on [381] this Island 27 years before I was ever summoned on the Grand Jury. My name was never picked in 27 years.

Q. There are two persons from the first precinct?
A. That's right.

Q. And you went down the list, you say, until you were satisfied you got the persons who would make good jurors?

A. If that precinct was entitled to two representatives, when we got the two representatives——.

Q. You stopped?

A. If we felt we had picked the right men, we stopped.

Q. You didn't go down the list of 350 registered voters to determine that 200 or so were qualified; then take the 200 names and put them in a box and draw at random the two?
A. No.

Q. You picked out the two that you thought you ought to have?
A. That's right.

Q. Now to come back to the question I asked you a moment ago—what in your mind would be a fair cross section of the community of Maui with regard

(Testimony of Claude E. Chatterton.)

to occupation, racial, social relations and other groups?

A. I am not qualified to answer that. I don't know.

Q. On this Grand Jury, Mr. Chatterton, on this list of 50, according to our statistics in evidence here, [382] there is a caucasian representation of 56% and a non caucasian representation or the balance is 44%. In the population, according to registered voters, not population as a whole, but according to registered voters in 1946, last year, the caucasian percentage of the registered voters was 22.9; and the non caucasian registered vote was 77.1. Now, do you consider the representation of 56% caucasian on the jury as against 22.9 of the registered voters a fair cross setcion?

A. I really couldn't answer that because your percentages are your percentages, Mr. Resner. We would have to verify those percentages. I would like to see that percentage verified.

Q. Well, answer my question without verifying them, because this record is so far as it can—if it is subject to error, the error will be developed. But to answer my question—is it a fair cross section in your judgment?

A. Does it have to be a fair cross section according to the statute?

Q. Are you asking me?

A. I am asking you.

Q. If his Honor will permit me to answer you,

(Testimony of Claude E. Chatterton.)

I will say that as I read the decisions of the Supreme Court, the Grand Jury and petit jury should be a fair cross section of the community—a representative cross section of the community. And what I am asking [383] you is this—isn't it rather remarkable that in a community which has 22.9% caucasian voters of the male sex, that you find 56% of that same group of caucasians in the Grand Jury list?

Mr. Crockett: If the Court please, we object to the question as it is formed as calling for the opinion of this witness and again invading the province of the Court to decide as to whether or not it is a fair cross section of the men selected on the list.

The Court: It is purely argumentative, Mr. Resner.

Mr. Resner: I will reframe the question, then. Does the fact, Mr. Chatterton, that there are 56% caucasians on this Grand Jury, assuming the truth of our figures, as against 22.9% caucasians among the male voters indicate to you that this is a true cross section of the community?

Witness: Well, I could refer you back to my last statement—that I figure the Grand Jury panel that was picked, regardless of cross sections, is the best Grand Jury that we have had on this Island—and typical of what could be picked.

Q. Do you mean best in the sense of intelligence and education?

A. I mean in fairness, education, intelligence, yes.

(Testimony of Claude E. Chatterton.)

Q. And so far as this 22.9% caucasians among the registered voters, male voters in 1946, as against the [384] 56% of caucasians on the panel—do you consider that a true cross section of the community?

A. That, again, I cannot answer. Possibly yes; possibly no.

Q. You were on the Grand Jury Commission in 1946 too? A. That's right.

Q. In 1946, according to our figures, and again assuming them to be true, Mr. Chatterton, the percentage of caucasians on the Grand Jury was 72% as against 22.9% of caucasians among the male registered voters. You consider that in 1946 with regard to race the Grand Jury was a fair cross section of the community?

A. That I cannot answer.

Q. Is there any reason why you can't answer?

A. I don't know.

Q. Now with regard to occupational makeup of the Grand Jury, Mr. Chatterton, according to our statistics—and assuming their validity for the purpose of these questions to you—it shows that in 1946, there were 93.2% of the—as compared with the population—managerial, entrepreneurial and clerical people.

A. What is that second one?

Q. Entrepreneurial.

A. What does that mean?

Q. People who are in business; people who pro-

(Testimony of Claude E. Chatterton.)

mote, who invest, and so on—and clerical—that there [385] were 93.2% of that kind of people on the Grand Jury, and there were 6.8% of laborers on the Grand Jury. It also shows that of the qualified male voters for jury service, there were 21% of that grouping in the population—that is, managers entrepreneurs and clerical people, and there were 10.9 of—79%, rather, of laborers qualified. Now, taking those figures together, would you say that a Grand Jury composed, as it was in 1946, of 93.2% managers, entrepreneurs and clerical was truly representative of the community?

Mr. Crockett: If the Court please we object to the question as again calling for the opinion of the witness, and the further fact that the question as framed by Counsel entirely omits the other elements that it is necessary for the Jury Commissioners to take into consideration. There is nothing in those bald figures, as he quotes them, which give the Court any idea, or gives the witness a fair chance to answer, as to whether or not out of the manager class, as he calls it, what percentage of the manager class is qualified under the provision of the statute—nothing in the question as framed to indicate what percentage of those 79% of laborers who are qualified under the provisions of the statute. So, therefore, the question as framed and as put to the witness is not a fair question. And for the further reason that it invades the province of the Court in [386] calling for the conclusion of the wit-

(Testimony of Claude E. Chatterton.)

ness which the Court is sitting here to determine for itself.

Mr. Resner: I phrased the questions by citing persons who are qualified for jury duty.

Mr. Crockett: The figures that Counsel has quoted are not necessarily people who have qualified for voters. The witness who was on the stand the other day quoted those figures as being persons whom he deemed as qualified. And their only qualification was that, according apparently to figures which he had compiled, they had passed an 8th grade education. The statute requirements are something entirely different—something more than an 8th grade education. The statute says people who are intelligent and people of moral character—and the legislature has never said that every person who has passed an 8th grade education is automatically qualified for jury duty. That was the conclusion of Mr. Oshima on the witness stand—not the standard this Commission is required to use.

The Court: The Court has heard enough. The Court sustains the objection on the ground that it invades the province of this Court and calls for this witness to give a decision which the Court ultimately on the fact will have to determine. [387]

Mr. Resner: Mr. Chatterton, is a jury which has 93.2% managers, entrepreneurs and clerks on it, as in 1946, a fair cross section of the community?

Mr. Crockett: If the Court please, that is the

(Testimony of Claude E. Chatterton.)

same question—just framed in different words—which the Court has already ruled upon as calling for the opinion of the witness. We object to it on the same ground.

The Court: Again invading my province, Mr. Resner. I am sorry—I am going to have to insist on being the judge on this.

Mr. Resner: I take exception to your Honor's ruling, this and the previous one.

The Court: Exceptions allowed.

Mr. Resner: Mr. Chatterton, what in your opinion would be a fair cross section of the community to be represented on the Grand Jury with regard to occupational groups?

Mr. Crockett: To which we object again, if the Court please, on the same ground.

The Court: Objection sustained.

Mr. Resner: I except. Does your Honor allow the exception?

The Court: Exceptions are always allowed. You are taking it as a record and that is allowed by the Court.

Mr. Resner: I understand. Of course our practice is different. Exceptions are abolished under [388] the Code Pleading procedure, and the mere objection preserves the exception. And I understand your practice is different.

The Court: You note your exception and see that the Reporter's hand moves on that.

Mr. Resner: Thank you, sir. Mr. Chatterton, in

(Testimony of Claude E. Chatterton.)

making up this Grand Jury, did you try to get representatives from all different kinds of occupations, businesses, professions, work, employment?

Witness: So far as possible.

Q. Did you try to get them with regard to the respective proportions that those groups held in the community?

A. No, we didn't use any set percentage figure.

Q. Did you determine that persons who held business positions were at the outset better qualified than those who were not business people?

A. My opinion is the same as Judge Wirtz, Mr. Resner. Your idea of management and my idea of management are two different ideas.

Q. What is yours?

A. I believe a very large amount of men who are not in any way concerned with management—my idea of management is the man in the institution who has the power to hire and fire, and in the institutions that we have here, in the business houses, there are very few of that type. [389]

Q. You wouldn't include, then, among management those who hold supervisory or managerial positions?

A. Not in my book, no.

Q. You would only include the owner himself as management?

A. I am talking about corporations.

Q. I am talking about corporations too. You consider corporate owners as management?

(Testimony of Claude E. Chatterton.)

A. And his designated men directly in charge of the business.

Q. But no one under him would be management?

A. There are others who have the power to hire and fire.

Q. Wouldn't those who occupy supervisory positions be management?

A. I don't believe so.

Q. What are they?

A. They are supervisors.

Q. Yes, but as between management and labor, where do you classify them?

A. As supervisors.

Q. Would you classify them with the labor group or management group?

Mr. Crockett: I submit the question has been already been asked and answered, if the Court please. The witness has already testified supervisors.

Mr. Resner: Will you answer the question, Mr. Chatterton? [390]

Mr. Crockett: I have objected to the question, if the Court please.

The Court: The objection is overruled.

Witness: I will stand on the answer of supervisor. I have no idea whether it would be classed as labor or management.

Mr. Resner: Here is a man by the name of Burns who is a superintendent at Baldwin. Is he management or labor?

(Testimony of Claude E. Chatterton.)

A. I don't know what his duties are, whatsoever.

Q. Here is a gentleman known as Allen, manager of Wailuku Sugar Company.

A. Mr. Allen would come under management.

Q. Here is a man named Bowmer who is cashier at Baldwin Packers. Is he management or labor?

A. I wouldn't say whether he is either one, but he is not management.

Q. And here is Mr. Bruce, manager of East Maui Irrigation Company.

A. I believe Mr. Bruce would come under the heading, management.

Q. Here is Mr. Moodie, manager of Paia Store.

A. That is the same.

Q. Management? A. That's right.

Q. Here is Mr. Broadbent, assistant manager of H. C. & S. Company.

A. I believe Mr. Broadbent has the right to hire and fire. He would be a manager. [391]

Q. Mr. Fleming is a manager?

A. I don't know the policy of the Shell Oil Company.

Q. Mr. Baldwin is a manager?

A. That's right.

Q. Both Mr. Baldwins, as a matter of fact.

A. Correct.

Q. Mr. Ezell would be a manager.

A. I don't know Mr. Ezell's status—whether he has—he is a branch manager, responsible to Honolulu.

(Testimony of Claude E. Chatterton.)

Q. In this group which we refer to as management, entrepreneurial and clerical, are included those as managers as you class them, those who own their own business and are closely identified with them; and clerical workers, which are people in a supervisory position, as used in the Census figures—allied with management—in management positions. It is not a term that we employ, Mr. Chatterton. It is the way the thing is broken down in the United States Census. Now, bearing that in mind, is it your opinion that this Grand Jury on an occupational basis represents a fair cross section of the community?

Mr. Crockett: To which we object, if the Court please, as calling for the opinion of the witness.

The Court: I think again it is invading the province of the Court and that there is no requirement that I know of in the decisions that have been read that there be any one standard of division where percentage is allowed, but that it shall be a fair [392] representation of the community from which it is chosen or the qualified electors. The objection will be sustained.

Mr. Resner: We except.

The Court: We will take a recess at this time until 2 o'clock.

(The Second Circuit Court recessed at 11:58 and reconvened at 2:00 p.m.)

Mr. Resner: Mr. Chatterton, with regard to the questionnaire which has been employed by the Jury

(Testimony of Claude E. Chatterton.)

Commissioners, which is Defendants' Exhibit 12 in evidence, can you tell me why question 7 appears—the nationality of father and mother—in view of the statutory requirement that jurors be selected without regard to race and nativity?

Witness: I had nothing to do with the making up of this.

Q. Did you look at that question with regard to race when it came in?

A. We didn't take it into consideration because the questions above give the Commissioners what information is necessary.

Q. You mean whether the person is a citizen?

A. That's right.

Q. What would be the purpose of asking for a person's nationality on a jury questionnaire?

A. I think that has been gone into—not once, but about a dozen times. [393]

Q. What is your answer?

A. My answer is the same as the others—because the Jury Commissioners are not the only ones who use this questionnaire.

Q. Do you know any lawyers who use the questionnaire?

A. No, I don't have that information.

Q. You don't think it is relevant to any function of the Commissioners—that question?

A. I wouldn't say it wasn't relevant.

Q. Is it relevant?

A. It could be in some cases.

(Testimony of Claude E. Chatterton.)

Q. Which kind of cases?

A. Well, in the case of—there was a question as to whether there had been a mistake made up here—and he came from parents who were—did not come from a country where naturalization could be had——.

Q. Well, let's assume this—I withdraw that. And question 3, when and where born, when answered would demonstrate whether a person was a native born citizen, would it not?

A. That's right.

Q. ““If naturalized, when and where””——.

A. Yes.

Q. Those two questions would show the two ways of obtaining citizenship, wouldn't they?

A. Yes.

Q. What, then, would be the purpose in that regard? [394]

A. I don't know why you are questioning me on it. I don't know.

Q. Well, but you were one of the Commissioners. A. Yes.

Q. Who has used this questionnaire.

A. Certainly.

Q. And you are charged by law with certain duties in selecting jury lists, and I am trying to determine what standard you employed. That is why I am asking you the question about question 7.

A. What is the detriment to have it in there? Don't you want as much information as you can get on a questionnaire?

(Testimony of Claude E. Chatterton.)

Q. I don't want to argue with you, Mr. Chatterton. I merely want to know why, when the statute says that the juror be selected, summoned, returned and sworn without reference to race or place of nativity, if that is the statutory requirement, it is necessary to have a question about nationality on the questionnaire.

A. I can't see why it hurts.

Q. Why do you have it there?

A. I don't know.

Mr. Crockett: Just a minute——.

Mr. Resner: That is all on that.

Mr. Crockett: Okey.

Mr. Resner: Now, why are the questions 9, 10 and 11 used? 9 being, "What is your present occupation?" No. 10 being, "Name your superior if employed—by whom?" [395] And No. 11—"What has been your occupation during the past five years?"

A. That is necessary information.

Q. In what regard is it necessary?

A. To know how a man—whether he has been to school, how long, who he works for, and who his superior is. We have got to have that information.

Q. But you do ask in lines 12 and 13 what a man's schooling is. A. Yes.

Q. So then questions 9, 10 and 11 have no relationship to schooling.

A. How would we know what a man's occupation is if it wasn't on the questionnaire?

(Testimony of Claude E. Chatterton.)

Q. Well, I concede the point that you wouldn't know it unless it was on the questionnaire, but I am asking you what is it on there?

A. I don't know. I didn't make up the forms, Mr. Resner.

Q. You did tell us earlier you thought the jurors were selected without regard to what a man did.

A. Yes, but we want to know what he does.

Q. Can you tell me why you would want to know that if it was of no importance?

A. I didn't say it was of no importance. You are wrong on that statement.

Q. If a man is selected without regard to employment, why is it of importance? [396]

A. I couldn't say.

Q. Do you know when these questionnaires were sent out to the local, or, immediately-near districts in the last period?

A. I think they started sending them out sometime in July. I'm not sure. I have nothing to do with that, but I knew they were going out because I received one myself.

Q. When did you receive it?

A. About the first part of August.

Q. Now, you live where, did you say?

A. Kahului. I vote at Kahului, but I live in Kula. I just recently moved up there.

Q. Did you participate in a decision to send the questionnaires out to the close-by districts?

A. That was decided almost two years ago that

(Testimony of Claude E. Chatterton.)

we would send them out to all precincts in the Territory to every registered voter as time permitted, and we started with the outlying districts with the object in view being to send in to the larger close-in districts as we had time.

Q. Who was charged with the duty of sending the questionnaires out in the close-by districts?

A. I do not know.

Q. Do you know of any field laborers on the Grand Jury list during 1945, 1946 and 1947?

A. I couldn't say. I don't think there are any on the 1947 list—but the 1946 list, I have no recollection [397] what that list comprises.

Q. Did you examine the various questionnaires as they came back?

A. You mean for the current session?

Q. For the Grand Jury of 1947—the questionnaires which came back in 1946 and preceding years.

A. Yes, all three Commissioners were present at every meeting.

Q. I show you the questionnaire of Patrick Ortello, who lives at Post Office Box 382, Rice Camp, Haiku, Maui; born at Haiku, Maui on October 2nd, 1924; parents, Filipino; employed as a—employed by the Kahului Railroad Company; went through the 8th grade at the Hana School; signed by Mr. Patrick Ortello. You probably saw this before? A. I probably have.

Q. That came back on October 2nd, 1946. It appears on your lists on the front page here that

(Testimony of Claude E. Chatterton.)

Mr. Patrick Ortello is disqualified, or, not qualified for jury service. Can you tell me on what basis such a determination was made?

A. No, I cannot.

Q. You are familiar, of course, with the fact that there are jurors who have less than an 8th grade education that are on there?

A. I am quite familiar with that.

Q. There is a requirement in the statute that a person understandably speak, read and write the English language. [398] What was the standard which you Commissioners applied on that requirement?

A. I can't remember that we applied any standard other than the amount of schooling that he had, which would indicate that he could read and write if he had gone to school. We assume that.

Q. What grade, if any, did you fix as a standard?

A. We didn't fix no grade as a standard.

Q. How did you determine it then?

A. Just the judgment of the Commissioners—that is what we are put on there for—to use our judgment.

Q. Now, with regard to persons that you didn't know personally, Mr. Chatterton, how could you, or, how did you exercise that judgment?

A. Just the way—our judgment. You can't analyze a man's judgment. We either decided he was or he wasn't.

(Testimony of Claude E. Chatterton.)

Q. You have already told us the number, the names of those grand jurors you knew. You knew substantially most of them. That is correct, isn't it? So, from your knowledge of them, I assume you could state whether they could understandably speak, read and write English.

A. That helped a lot—knowing them helped a lot.

Q. With regard to the people you didn't know, how could you make a determination on that qualification?

A. Mr. Resner, we only have 50 men to pick out of, as you say, 13,000 so many. [399]

Q. Sixty-five or sixty-six hundred registered voters in 1946.

A. But according to your expert's figures, there were 13,000 so many who were qualified to serve, and I think there was something like 14,000 who had gone through the fourth grade. I don't see how you got those figures, but I didn't have access to the reports.

Q. I still don't understand, Mr. Chatterton, how you fixed the standard of education for the jurors or those who might be jurors among those you didn't know.

A. There is no standard, as I understand it.

Q. What standard, if any, was fixed for your requirement that a person be intelligent and of good character?

A. I think we covered that in my testimony a

(Testimony of Claude E. Chatterton.)

little while ago. We went through that once before. I don't see that it is necessary to answer that question a second time.

Q. You meant good sense and general reputation in the community? A. That is correct.

Q. And that also should apply to the persons that you knew personally? A. Absolutely.

Q. How did you fix a standard for those you did not know personally? [400]

A. As I told you before, we made inquiries around, through friends, and stuff like that with some of them—not on all of them; that is impossible.

Q. It is true, of course—I just want to get it clear in the record—that this Grand Jury was not selected at random from names out of a box?

A. How many times do you have to be told that? But that is about fifty times in the last few days.

Q. That is a fact?

A. That is a fact. It is not pulled out in open court. The 23 names are pulled out in open court.

Q. Do you find it necessary to argue with me, Mr. Chatterton?

A. No, sir, but I do not like to be asked the same question over and over again.

Mr. Resner: If your Honor please, I think you should caution the witness that the witness need not argue with Counsel. I respectfully request of the Court that he so advise the witness.

The Court: There is really no need for either of you to argue with one another.

(Testimony of Claude E. Chatterton.)

Witness: Very well, sir.

Mr. Resner: I am sure, your Honor, I am not trying to argue with the witness.

If your Honor please, I should like to save next in order a number for the questionnaires that we have identified today which we will have photostated and certified and put in the record. May we save that number at this point? [401]

The Court: Mr. Clerk, will you indicate what number you are saving?

Deputy Clerk: That will be Movants' No. 19.

Mr. Resner: That is all on direct examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Chatterton, as I understand it, when the Commissioners met and you considered the list of voters, which list did you have before you? Was it the 1946 registered voters or was it the 1944?

Witness: The 1944 list of registered voters—not votes case, but registered voters.

Q. And that is the—I withdraw that. What kind of lists did you have—just to get it in the record.

A. They are the lists that are returned to the Clerk's Office by the various precincts in their election returns.

Q. That is, after the election is completed, these books are returned to the Clerk's Office, and they forward a set over to the Clerk of the Court?

(Testimony of Claude E. Chatterton.)

A. I don't know whether it is turned over to the Clerk of the Court. I think it is their permanent records. Whether it is sent to the Clerk of the Court or not, I don't know.

Q. In other words, it is a list that is only available after the election?

A. It is only available after the election. [402]

Q. Do you recall what the total registration was on the 1944 list?

A. As I recall, it was substantially the same as the 1946 in number. However, I think there was a difference in the—so many people left here during the war and lots of them didn't come back, and there was probably quite a difference in the make-up of it, but I think the number was substantially the same, because, as I recall, in our proportioning of the number of jurors for each district we used the factor of 66.

Q. And in respects to the standards which Counsel was questioning you about so far as you are able to recall, did you use the same standards for all persons that were considered—that is, in establishing the qualified lists and those that were not on the qualified lists?

A. I don't quite understand that question.

Q. Well, did you use one standard for one person and another standard for some other person when you were trying to determine the intelligence or their fitness for jury duty? Did you use the same standard for everybody so far as you were able to do so?

(Testimony of Claude E. Chatterton.)

A. We had no set standard, but trying to follow a general line so far as possible.

Q. In other words, just used your ordinary common sense?

A. That's right. [403]

Mr. Crockett: That is all.

The Court: The Court would like to ask a question in view of the examination, subject to Counsel's objection. Mr. Chatterton, have you any present recollection of disqualifying any name because of your judgment that the person involved did not understandably speak and read and write the English language?

Witness: No, sir.

The Court: That is all.

Mr. Resner: No further questions.

(Witness excused.)

Mr. Resner: Call Mr. Auld.

The Court: Do I understand, Mr. Resner, that you are now beginning to call the persons on the actual panel of the——.

Mr. Resner: On the array, your Honor.

The Court: May I ask the purpose of calling these individuals as to any matter that has not already been covered?

Mr. Resner: I desire to inquire of the members of the array the following information: their names, their residences and citizenship their business activity exactly, exact post held their business associations, their race exactly, their clubs and social connections exactly, their schooling exactly, their

prior jury experience, if any; their knowledge of the Jury Commissioners; whether they know that the [404] persons who are defendants in this case whose cases it is proposed to submit to the Grand Jury are members of the International Longshoreman's and Warehouseman's Union; whether they know whether the defendants were arrested in connection with incidents growing out of the strike in the pineapple industry which occurred in the month of July, 1947; what is their attitude towards these defendants because of their affiliation, one, with the union, and their participation in the strike, and next, what was their attitude toward the pineapple strike itself.

The first burden of those questions is directed toward the challenge to the panel as a whole and the list; the second part of it to the challenge for cause to the jurors individually. On yesterday, Counsel for the Prosecution inquired of four members of the jury their union affiliation. If that is pertinent, then so are these items about which we propose to seek information.

The Court: Will all the members of the actually serving, or, that is, Grand Jury that has been selected and drawn for service who are attendants in the court room kindly step forward and occupy the seats in the jury box. And, Mr. Bailiff, if there are not enough chairs, will you get some.

I might inform Counsel that there is one member who apparently was subpoenaed whom I have had to [405] excuse until tomorrow morning.

Mr. Resner: Mr. Peterson?

The Court: Mr. Fong. He is engaged upon a government contract and was under orders by the government inspector to pour concrete today, and for that reason, I excused him until tomorrow morning.

Mr. Clerk, will you swear in this entire group of gentlemen?

Mr. Resner: I must say, your Honor, that Mr. Peterson who was subpoenaed spoke to your Honor and asked to be called whenever he was wanted because he was busy, and we stated we had no objection to that.

The Court: Suppose we take a five minute recess while you collect all of these gentlemen, and then I will come back here.

(The Second Circuit Court recessed at 2:22 p.m.)

(The Second Circuit Court reconvened at 2:33 p.m.)

The Court: Mr. Clerk, will you now collectively swear in this group of men under the ordinary witness oath?

Kenneth Auld, Joseph H. Trask, Edward S. Bowmer, Allan Ezell, Richard H. Baldwin, Robert P. Bruce, Charles Thompson, John Plunkett, E. Stanley Elmore, Paul R. Reinhart, Edward H. K. Baldwin, Anthony A. Tam, Jack Costa, Wai Ken Tom and Walter Holt,

having been first duly sworn, collectively, were examined and testified as follows:

Examination by the Court

The Court: Gentlemen, be seated. I will ask you in sequence—having taken the oath in sequence—to state your name for the purpose of identification and your place and position of work, beginning with the first gentleman here.

(Indicating.)

Witness: Kenneth Auld, Molokai. Plantation superintendent—section superintendent.

The Court: What precinct?

Witness: I think it is the 31st. I am not sure.

The Court: What company? [407]

Witness: California Packing Corporation.

The Court: Thank you.

Witness: Joseph H. Trask, Paia, Maui. Manager of the Bank of Hawaii, Paia Branch.

The Court: Thank you.

Witness: Edward S. Bowmer, Lahaina, Maui. Cashier and assistant bookkeeper of Baldwin Packers.

Witness: Allan Ezell. Hawaiian Air Lines traffic manager. Wailuku.

Witness: Richard H. Baldwin. Haleakala Ranch Company. Manager of Haleakala Ranch.

Witness: Robert P. Bruce, Paia, Maui. Consulting civil engineer and manager of East Maui Irrigation Company.

Witness: Charles Thompson, Kihei, District of Wailuku.

The Court: Are you employed by anybody, Mr. Thompson?

Witness: No, sir.

The Court: What do you do as a matter of occupation or activity?

Witness: Well, I am a retired ranchman.

Witness: John Plunkett, Keanae, 21st precinct. Supervisor for the East Maui Irrigation Company in that section.

Witness: E. Stanley Elmore, Kula. Present manager of the Valley Isle Motors.

Witness: Paul R. Reinhart, Maunaloa, Molokai. Assistant plantation manager. [408]

The Court: Mr. Reinhart, you have not been sworn in as a grand juror as yet?

Witness: No, sir.

The Court: This is your first appearance?

Witness: Yes, sir.

The Court: But you were one of those drawn out of a box to be a member of the Grand Jury?

Witness: That's right.

Witness: Edward H. K. Baldwin. Manager of Ulupalakua Ranch, Ulupalakua.

Witness: Anthony A. Tam, farmer, Makawao.

Witness: Jack Costa, Chief electrician, H. C. & S. Company sugar mill. Puunene.

Witness: Wai Ken Tom, Wailuku, Maui. Supervisor of revenue of Mutual Telephone Company.

Witness: Walter Holt, Haiku, Maui. Associate forester with the Board of Agriculture and Forestry.

The Court: Gentlemen, I want to inform you collectively and individually before I ask a question in this proceeding that there is pending in this court, coming up from the District of Lanai, County of Maui, in Criminal No. 2413, a complaint which purports to charge: "That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Lanai City, District of Lanai, Territory of Hawaii, on to-wit the 14th day of July, 1947, [409] together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others

contrary to the form of the statutes in such cases made and provided"—the same complaint which I have been reading from in Criminal File No. 2413 being a file from one Andrew S. Freitas, who, the Court is informed, is a police officer of this County.

That also there is pending in this court and part of these proceedings that we are now engaged in, in Criminal No. 2412, a complaint originating from [410] the District of Lanai, County of Maui, that:

"Andrew S. Freitas first being duly sworn says: 'That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.' " Signed and sworn to by the same Andrew S. Freitas who, the Court is informed, is a police officer of this County.

These charges, the records show, having been brought before the District Court of Lanai, each defendant waived preliminary examination in that court and the accused were bound over to the Circuit Court awaiting the action of the Grand Jury of this court.

The report may show that I have been reading from the complaints on file in the two records named, and any check-up of mistaken pronunciation or leaving out of any words may be supplied from those records.

Now, gentlemen, I do not want to assume to usurp the functions of the regular Judge of this court, but in view of the challenges made upon members of the panel, it is necessary in order to preserve as far as possible the impartiality of these proceedings that I remind you—those of you who have assembled together when called originally as grand jurors in this division of the Circuit Court—of portions of the charge given you at that time that—“In your investigations you will receive only legal evidence to the exclusion of mere reports, suspicions and hearsay evidence. Subject to this qualification, you will receive all the evidence presented which may throw light upon the matter under consideration——” and so on.

I am reading from Page 7 from the Charge given, as the records show, to the Grand Jury when it assembled this year.

Going on—“And further, if in the course of your inquiries, you have reason to believe that there is

other evidence not presented to you but which is within your reach and which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced."

Passing over, the Court called attention to the oath which was administered at the time of the original assembly, emphasizing on Page 9 of the Charge:

"First: It is provided that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service.

"That you will present no one through envy, hatred or malice.

"That you shall leave no one unpresented through fear, favor, affection, gain, reward, or hope therefore, but will present all things truly as they come to your knowledge according to the best of your understanding."

And further in the Charge, the Court called attention: "If, in the course of your proceedings, any case or matter shall come before you in which any member of the Grand Jury shall be personally interested or involved, or otherwise disqualified, he shall not participate in the consideration of such case or matter but shall withdraw therefrom."

There is another portion of this Charge [413] which if I can find it without delay I want to remind you of. Here it is on Page 5 of the Charge.

“Upon you, Gentlemen, there is cast a double duty; one, a duty to the Government, or, more properly speaking, to society, to see to it that parties against whom there is just ground to charge the commission of crime, shall be held to answer the charge; and, on the other hand, a duty to the citizen to see that he is not subjected to prosecution upon accusations having no better foundation than public clamor or private malice.”

With those reminders from the Charge given and particularly in view of the matters that I have read from the criminal complaints that have been submitted to this Circuit Court for action by the Grand Jury and that are awaiting the disposal of the questions when we get a properly constituted Grand Jury, and for the purpose of this proceeding this afternoon or while you are in attendance here—assuming for the time being the possibility that any of you gentlemen might be amongst such a panel—the question from the Court is: that being apprised of the persons whose names I have read that are charged upon the matters to be presented sometime to a properly constituted Grand Jury if these proceedings continue, and having in mind the possibility that everyone of these persons so charged are members of a trade union, and having in mind that they have been members [414] of a trade union involved in the late pineapple strike, and having in mind the principle applicable in the United States of America that every person is presumed to be innocent until found guilty, but that your stage in

the proceedings, if you should be members of a Grand Jury panel, would be that the persons named before you were innocent of anything thereby charged until as properly presented convinced you as members of the Grand Jury, if you were members, that there was a prima facie showing of some offense upon which the individuals, identified properly by the evidence, should be put on trial, is there any member of the group that is now before me, who, if they were members of such a Grand Jury panel taking such an investigation, would find in connection with their position in life or their neighborhood in any precinct community any cause for making it impossible, due to disqualification for interested participation or otherwise, to consider any persons, so charged, to be innocent until properly qualified and to give such persons the benefit of your impartial consideration? If there is any gentleman who would find it necessary for himself to request that he be permitted to step aside, will you raise your hand now and so express it.

(No response.) [415]

The Court: (Continuing.) I take it, gentlemen, with the pause that has been given that there is no person in the group now sworn before me who finds in their deep conscience any reason to have either a prejudice against the defendants, their attorneys or the situation involved in such an investigation that would make it impossible for them to be impartial in their consideration. Is that your response? If there is anybody who disagrees with

that response and again desires to take advantage of expressing a request to withdraw from any consideration of being a part of such a tribunal, will you raise your hand.

Mr. Resner: If your Honor please, I should like to interpose an objection to the Court's questions of the members of the Grand Jury array in this particular case upon the grounds that I believe the Court has usurped in this particular instance the duty and the prerogative of Counsel to examine witnesses, and particularly to direct to your Honor's attention the decision of the Supreme Court of the Territory in the case of Territory of Hawaii vs. Sam Van Culin, 36 Hawaii Reports, page 153; and further for the record to take an exception upon the ground that I believe this examination by the Court of the jurors has rendered the proceedings as far as these defendants are concerned unfair and not an impartial hearing. [416]

The Court: I am not through, Mr. Resner, and your turn is coming. The exception may be noted.

Now, gentlemen, those are the preliminary matters—with one exception. I must add a specific caution in connection with this factor in the event that you are further examined and also in the event that any one of you may serve in a further investigation of the charges. It is the general law of this jurisdiction that you are not bound by any Prosecutor's attorney of the degree of offense that he thinks evidence that might be produced before a Grand Jury might show.

To be concrete and illustrative. I read to you the charges that have come up and are awaiting action by a Grand Jury. The charges in themselves charge riot. The evidence in itself might conceivably not come up to a standard about which the jury would be entitled to advise themselves from the Court as to what would constitute riot. In other words, you are advised that if any incident of this character occurred during a labor union dispute, it is the law of the land that the labor union has a right to peaceably assemble. It is the law of the land that the labor union has a right to peaceably picket. And if in the course of an activity of that sort, spontaneous bursts of passion lead to miscellaneous assaults between parties that are present, that in and of itself [417] would not create out of that assembly an unlawful assembly. It is only in the event that the evidence produced before such a body convinced them that, under the guise of a peaceful assembly, and under the guise of peaceful picketing, there was in fact a concerted plan and conspiracy to intimidate, coerce and prohibit other peaceful citizens from pursuing their lawful matters before parties that were involved, and that through that concerted plan and as a part of the concerted plan the innocent-appearing assembly was really an assembly for the purpose of producing force and violence as a means to its own peculiar ends, that there would be any justification to assume that persons identified as being parties to such a thing could be indicted for a felony of that character. In other words, the evidence produced

before a body of grand jurors might be no more than the fact that misdemeanors of general flare-up, of passion, assault and batteries or mere assaults were involved although the numbers would be identifiable as being more than one. It might be that it was no higher than a general outburst of an affray.

What I am trying to say is that the mere fact that a police officer charges a higher crime does not mean that a Grand Jury in its impartiality has to find what the police officer wants. One of the [418] purposes that I read you in the Charge of the Court was that you are protectors of the innocent, you are protectors of those to be hounded by passion and prejudices of the community just as much as you are protectors of the community in case the evidence warrants other action.

With that in mind, I am going to leave it to the Attorney for the Defendants in the respective claims for information that he desires to get out of each of you in the matters that he gives you—without a free-for-all voir dire examination, but to get into the record the facts that he has the right to have here and a chance to interrogate you individually if he so desires.

Now, Mr. Resner, you want to take exception to those remarks?

Mr. Resner: Yes, I do—upon the grounds previously stated.

The Court: The exception will be noted. You may proceed, Mr. Resner, along the line that you stated to the Court you wanted information.

Mr. Resner: Yes, your Honor.

KENNETH AULD

Direct Examination

By Mr. Resner:

Q. Mr. Auld, you were the first gentleman.

Witness: Yes, sir.

Q. Your exact residence? [419]

A. Hoolehau, Molokai.

Q. How long have you lived there?

A. I have lived there twenty-two years.

Q. And your exact business activity?

A. Section superintendent, California Packing Corporation—pineapple industry.

Q. You have the power to hire and fire?

A. No, I haven't, but through my recommendation—through recommendation to the upper—to my management.

Q. Are you a part of management?

A. I am not. I am just a superintendent—that's all.

Q. What is your race?

A. I am part-Hawaiian—Scotch-Hawaiian.

Q. What schooling have you had?

A. High school and three years of college.

Q. In the Territory? A. Yes, sir.

Q. Do you know the Jury Commissioners—Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes, I do.

Q. Have you been acquainted with them for a long time?

(Testimony of Kenneth Auld.)

A. Well, with Mr. Pombo—that is about all I have been acquainted with for quite a while.

Q. And was your concern involved in the recent pineapple strikes? [420] A. Yes, I was.

Q. Were you involved yourself?

A. No, I was not—not exactly.

Q. What do you mean by that, Mr. Auld?

A. Well, I had—I knew the strike was on, and as an executive of the company we were to carry on the business just the way we were supposed to do every day, and as far as the strike was concerned—why, the strike was on and that is all there was to it. We didn't even talk about the thing. To get the pineapples out, that was all I was concerned about.

Q. What is your attitude toward the International Longshoreman's and Warehouseman's Union?

A. I think ILWU is a good organization. I have nothing against it. It is part of the laborers' concern—their free right.

Q. With regard to the defendants here who are members of the ILWU and who were on strike at the time you mentioned, do you have any feeling with regard to those men because they were involved in the strike as members of the ILWU?

A. No, sir.

Q. None whatsoever? A. Nothing.

Q. I have no further questions of Mr. Auld.
Mr. Crockett: I have no questions.

(Testimony of Kenneth Auld.)

Mr. Resner: Are you personally a member of the [421] Chamber of Commerce?

Witness: No, sir.

Q. Oh the Junior Chamber of Commerce?

A. No, sir.

EDWARD H. BALDWIN

Direct Examination

By Mr. Resner:

Q. Mr. Edward Baldwin—your residence, sir?

Witness: Ulupalakua, Maui.

Q. And the length of your residence?

A. Since 1923.

Q. Your exact business?

A. Ranch manager.

Q. Is this a ranch which you own?

A. No.

Q. A ranch which you manage? A. Yes.

Q. Who is the owner of the ranch?

A. Mr. F. F. Baldwin.

Q. What is your race, Mr. Baldwin?

A. American.

Q. You were born in the Territory?

A. I was born in the Territory.

Q. What schooling have you had?

A. I have been through preparatory school—
one year of college.

Q. Have you had prior experience as a juror?

A. One term. [422]

(Testimony of Edward H. Baldwin.)

Q. Grand Jury? Trial? A. No.

Q. Do you know the Commissioners personally?

A. I do.

Q. How long have you known them?

A. Good many years.

Q. That is, Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes. I have known ever since Judge Wirtz has been here.

Q. Are you a stockholder in any companies which were involved in the recent pineapple strike?

A. Yes.

Q. Which one?

A. Hawaiian Pine. I believe that is the only one.

Q. Maui Pineapple?

A. Well, no—I own Maui Agricultural Company stock, but I don't own——

Q. You don't own any Maui Pine stock?

A. No.

Q. What is your attitude toward the ILWU?

A. I never had any experience with them—I don't know.

Q. What is your attitude towards these defendants in view of the fact that they are members of the ILWU and were on strike against the pineapple companies?

A. I don't know the facts there either.

Q. Did you have any feeling in that respect?

A. No.

(Testimony of Edward H. Baldwin.)

Q. None at all? A. No.

Q. What was your attitude towards the pineapple strike itself?

A. Well, I wasn't entirely up on that either. I did feel that the demands made by the union were rather excessive.

Q. Are you a member of either the Chamber of Commerce or the Junior Chamber of Commerce?

A. I am a member of the Chamber of Commerce.

Q. Did you participate in the resolution that condemned the union for the strike?

A. No, sir.

Q. Did you agree with the resolution? Do you know about it? A. I do not.

Q. At the time of the pineapple strike, the Territorial Chamber of Commerce issued a resolution to members of the union. You know anything about it? A. I know nothing about it.

Q. It was done without your participation?

A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions, if the Court please. [424]

RICHARD H. BALDWIN

Direct Examination

By Mr. Resner:

Q. Mr. Richard Baldwin?

Witness: Yes.

Q. What is your residence, Mr. Baldwin?

A. Kula, Maui.

Q. And your place of birth?

A. Honolulu.

Q. You have lived in the Territory all your life?

A. I have.

Q. And your business?

A. Manager of the Haleakala Ranch.

Q. Are you a owner of that ranch?

A. No, I am not.

Q. Who is the owner?

A. There are several—Mr. S. A. Baldwin, Mrs. H. A. Baldwin and Mrs. J. W. Cameron.

Q. Are you a stockholder in any of the pineapple companies or plantations?

A. Yes, Baldwin Packers.

Q. Maui Pine?

A. Through Maui Agricultural Company.

Q. Through Maui Agricultural Company, Now, your race is what? A. American.

Q. What schooling have you had?

A. Three years of college.

Q. And what prior jury experience? [425]

A. One term.

Q. On the Grand Jury? A. Yes.

Q. By the way, on the question of race what you mean is caucasian? A. Haole.

(Testimony of Richard H. Baldwin.)

Q. You mean caucasian—I mean American really describes everybody here. A. Yes.

Q. What is your attitude toward the ILWU?

A. I don't know much about it. I have had no experience with it.

Q. What was your attitude toward the recent pineapple strike?

A. Oh, I thought that—I felt that the demands as finally accepted, if they had been accepted in the beginning the workers would have been a lot better off. I thought the demands, original demands were high.

Q. Do you have any feeling against the ILWU because of the demands made? A. No.

Q. What is your attitude toward these men, who were members of the ILWU, because of their participation in the strike? A. Impartial.

Q. You feel—you have any feeling because they were involved in the strike against concerns in [426] which you own stock interests? A. No.

Q. You have no feeling in that regard?

A. No, I have not.

Q. You feel you could refuse to indict them just as well as indict them?

A. Depending upon the evidence.

EDWARD S. BOWMER

By Mr. Resner:

Direct Examination

Q. Mr. Bowmer?

Witness: Yes.

Q. Could you tell me your address?

A. Lahaina, Maui.

Q. Where were you born? A. England.

Q. How long have you been a resident of the Territory? A. Since 1919.

Q. And your race is caucasian? A. Yes.

Q. And your schooling has been what?

A. One year of high.

Q. What juror experience have you had?

A. One term, trial jury.

Q. Here in Maui? A. Maui, Wailuku.

Q. What is your exact business activity?

A. Cashier and assistant bookkeeper for Baldwin Packers. [427]

Q. That is a pineapple concern? A. Yes.

Q. Your company was directly involved in the recent pineapple strike? A. It was.

Q. And you are one of the management there?

A. No—just a cashier.

Q. But are you in that part of the business which is the management end of the business?

A. I have no management to do.

Q. Are you in that end of the business which is the management end of the business?

A. More in the supervisor group than anything else.

Q. Supervisor of what, Mr. Bowmer?

(Testimony of Edward S. Bowmer.)

A. I have charge of the journals, posting books, shipping, preparing shipping papers.

Q. Now, what is your attitude toward the ILWU?

A. I have no attitude towards the ILWU at all.

Q. None of any kind? What is your attitude toward ILWU activity in the recent pineapple strike?

A. None at all.

Q. You had no feeling?

(Witness shaking head.)

Q. Did you express yourself? A. No.

Q. You remained on the Island throughout?

A. Yes.

Q. What is your attitude toward these defendants in [428] this case whose cases are supposed to be brought before the Grand Jury because of the strike?

A. Impartial.

Q. Completely so? A. Yes.

Mr. Resner: No other questions.

The Court: I would like to bring out something, or ask you, Mr. Resner. The last two of these gentlemen brought out they are related in business activity to the Baldwin Packers—I think it was a pineapple company. The location of that company, as to whether it has anything to do with the Lanai situation that is under investigation here, is also pertinent. I think it should be differentiated for the record.

Mr. Resner: I think it a matter of more or less common knowledge, if your Honor please, that the

(Testimony of Edward S. Bowmer.)

pineapple industry acted as a whole in connection with the recent strike.

The Court: Yes, but under the caution that these jurors, if they were to be jurors, were charged by the Court that anything that they would be interested in—it might be confusing in this record, just the general term, “interest in pineapple company.” These gentlemen whom you have interrogated are not in the company that was doing business on Lanai where the incident occurred. I think that is material—to avoid confusion in a blank record here that is to be [429] perused by others.

Mr. Resner: I just don’t deem it so.

The Court: If you don’t, then I will. Mr. Bowmer, where is the Baldwin Packers?

Witness: Lahaina.

The Court: Lahaina?

Witness: Yes, sir.

The Court: Was it in any way involved in any of the Lanai incidents that are covered by the charges being presented to the Court?

Witness: Not that I know of.

The Court: That is all.

Mr. Crockett: If the Court please, might I suggest that the questions asked Mr. Richard Baldwin and Mr. Edward Baldwin which indicated that through the Maui Agricultural Company they had some indirect interest in the Maui Pine. I think the record should show that Maui Pine is on the Island of Maui, and is not——

The Court: You can ask those questions.

(Testimony of Edward S. Bowmer.)

Mr. Crockett: May I be permitted at this time?

Mr. Resner: I want to save an exception, if your Honor please, to the Court's question. I take the position that it usurps the functions of Counsel under the rule announced in *Territory of Hawaii vs. Van Culin*, and I take an exception in order to save the point in the record. Not only does it usurp the function of Counsel, but I believe the question is [430] immaterial to the issue developed here so far as the defendants are concerned and this is cumulative with regard to the other questions the Court has asked of the jurors and other questions in the proceedings.

The Court: In view of what you now put into the record, Mr. Resner, the record should also show that the substitute Judge now sitting is not as familiar with the localities on the Island of Maui and the County of Maui as the local Judge, and that for my own sake as a final decider of the facts and the law in this proceeding before me, I desire to be informed as to what the connection might be between the general name, pineapple company, and the location in which these incidents occurred.

Mr. Crockett: May I have the permission to question Mr. Baldwin?

The Court: Yes.

EDWARD H. K. BALDWIN

Cross-Examination

By Mr. Crockett:

Q. Mr. Edward Baldwin, you mentioned that you have an indirect interest in Maui Pineapple Company through your ownership of stock in the M. A. Company.

Witness: That si correct.

Q. First of all, when you refer to the M. A. Company, what company is that?

A. Maui Agricultural Company. [431]

Q. Where is that located? A. Paia.

Q. And was the M. A. Company as such in any wise involved in the recent pineapple strike?

A. I do not know the circumstances.

Q. And the Maui Pine Company that you refer to—where is that located?

A. Headquarters at Maliimaile, I believe.

Q. Haliimaile—on the Island of Maui?

A. On the Island of Maui.

Q. And Haliimaile, for the benefit of the Court, where is that in relation to Wailuku or Makawao?

A. That is near Makawao.

Q. Just a short distance below Makawao?

A. Yes.

The Court: That is on the slopes of Haleakala?

Witness: Yes.

Mr. Crockett: And so far as you know was the Maui Pineapple Company in any wise involved in the incident which occurred on the Island of Lanai?

Witness: Not that I know of.

RICHARD BALDWIN

Cross-Examination

By Mr. Crockett:

Q. Mr. Richard Baldwin—was the Maui Pineapple Company the same company that Mr. Edward Baldwin has just mentioned and described?

Witness: Yes. [432]

Q. Do you know whether or not the Maui Pine was in any wise involved in the incident which is alleged to have occurred on the Island of Lanai?

A. Not that I know of.

KENNETH AULD

Cross-Examination

By Mr. Crockett:

Mr. Crockett: I think Mr. Kenneth Auld was referred to as being a pineapple worker.

Witness: Yes, sir.

Q. With what company are you connected with?

A. California Packing Corporation.

Q. I think you refer to it as C.P.C.?

A. Yes.

Q. Was your company in any wise involved in the incident which occurred on the Island of Lanai?

A. I don't know, as far as I am concerned.

Q. So far as you are concerned, it was not.

EDWARD BOWMER

Further Direct Examination

By Mr. Resner:

Q. Mr. Bowmer, Baldwin Packers is a member of the Hawaiian Employers' Council, isn't it?

Witness: I believe it is.

Q. And didn't the Hawaiian Employers' Council handle the negotiations of the pineapple strike for the industry?

A. I suppose they did—if they were members of that organization. [433]

Q. Mr. Bowmer, didn't the Hawaiian Employers' Council handle the strike for the pineapple industry?

A. I suppose it did.

Q. Well, you know they did, don't you?

ROBERT P. BRUCE

Direct Examination

By Mr. Resner:

Q. Mr. Bruce?

Witness: Yes.

Q. What is your address, Mr. Bruce?

A. Paia, Maui.

Q. And how long have you lived in the Territory?

A. About twenty years.

Q. Where were you born?

A. Scotland.

Q. Your race is caucasian?

A. Yes.

Q. Your exact occupation?

A. I am a civil engineer.

Q. Any business connections?

(Testimony of Robert P. Bruce.)

A. I am also manager of East Maui Irrigation Company.

Q. Is that connected with the Baldwin interests?

A. Yes.

Q. Which ones? A. What do you mean?

Q. Which Baldwin interests—Alexander & Baldwin or the pineapple companies?

A. H. C. & S. and M. A. Company. [434]

Q. Which are both connected with Alexander & Baldwin? A. Yes.

Q. Are you a stockholder in any of the pineapple companies? A. No.

Q. Are you a stockholder in any of the Baldwin concerns? A. No.

Q. What schooling have you had?

A. I graduated from college.

Q. What prior experience have you had?

A. I have never served on any other jury except this Grand Jury.

Q. The instant one? A. Yes.

Q. What is your attitude toward the ILWU?

A. It is completely impartial.

Q. You think you have a neutral attitude?

A. Yes. I have dealt with the ILWU and the dealings have been friendly.

Q. What is your attitude toward these defendants involved, as they were, in the recent pineapple strike?

A. Impartial. Lots of friendly dealings with the union. I have not been against the union as such.

(Testimony of Robert P. Bruce.)

Q. Do you have anything against anything in connection with the union as such? I gather that inferentially from your reply. [435]

A. You asked about these defendants. I have nothing against these defendants.

Q. I gathered from your answer—and I may be wrong in this—I gathered in your reply some feeling of criticism in some other direction. Am I right in that inference?

A. No, I don't think so. You mean against the ILWU?

Q. Yes, and its membership.

A. Our company has had an ILWU union and my dealings have been on a friendly basis with them.

Q. Mr. Bruce, did you recently call together your workers and inquire of them whether they wanted to withdraw from the ILWU?

A. No, the workers had a meeting in which they—after the meeting, they signed a petition in which they stated they did not want to be represented by the ILWU.

Q. Who called the meeting?

A. The workmen.

Q. You are sure of that? A. Yes.

Mr. Resner: I have no further questions of Mr. Bruce.

Mr. Crockett: I have no questions.

Mr. Resner: Is Mr. Burns present?—No, he is in San Francisco. Mr. Cornwell—not here. Is Mr. Costa here? [436] Witness: Yes.

JACK COSTA

Direct Examination

By Mr. Resner:

Q. Mr. Costa, what is your occupation?

Witness: I am chief electrician at the H. C. & S. Company mill.

Q. Chief electrician at the H. C. & S. Company mill. How long have you had that position?

A. Fourteen years.

Q. Have you had any prior jury service?

A. Yes, once.

Q. Grand Jury or trial? A. Trial.

Q. What schooling have you had?

A. High school.

Q. Do you know these Commissioners personally? A. Yes, I do.

Q. For a long time?

A. All the time I been on this Island, yes.

Q. And how long have you been a resident of the Island?

A. Fourteen years—seven years once before.

Q. What is your race, Mr. Costa?

A. Portuguese.

Q. You are caucasian? A. Yes.

Q. What is your attitude toward the ILWU?

A. Nothing at all. I haven't anything against it. I have quite a number of them under my charge.

Q. What is your attitude towards these defendants involved in the recent pineapple strike?

A. Nothing at all.

(Testimony of Jack Costa.)

Q. What is your attitude about the recent pineapple strike?

A. Nothing much there except I thought it was—I was hoping they would come to some agreement without having to take—to go on strike. That's all.

Q. You have any feeling about the union in connection with its strike activities?

A. No, I haven't.

Mr. Resner: No further questions of Mr. Costa.

Mr. Crockett: I have no questions of Mr. Costa.

E. STANLEY ELMORE

Direct Examination

By Mr. Resner:

Q. Mr. Elmore?

Witness: Yes.

Q. What is your address?

A. I live in Kula.

Q. How long have you been a resident of the Territory? A. Little over 31 years.

Q. And your business is what?

A. I am president and manager of Valley Isle Motors.

Q. Do you have any stock interests in any of the pineapple companies? A. I do not. [438]

Q. Your race is caucasian?

(Witness nodding.)

Q. What prior jury experience have you had?

A. I was on the Grand Jury panel in Hilo dur-

(Testimony of E. Stanley Elmore.)

ing my 24 years' residence there—I imagine seven or eight times—I don't remember.

Q. And this is your first service?

A. No, my second or third service on Maui.

Q. What schooling have you had?

A. Three and a half years of college.

Q. What is your attitude toward the ILWU?

A. I believe in organized labor. I have nothing against them.

Q. What is your attitude toward the defendants involved in the recent pineapple strike?

A. I consider them innocent until proven guilty.

Q. The same is true of any charges that might be presented of them? A. That's right.

Q. What about the pineapple strike itself? What attitude did you have about that?

A. Well, my only attitude to the strike—I felt that the demands were excessive in face of the fact that they were getting a good wage and the demands were excessive. That was my only attitude toward the recent strike.

Q. Are you a member of the Territorial Chamber of Commerce? [439]

A. No, sir, I am a member of the Maui Chamber of Commerce.

Q. Is that affiliated with the Territorial?

A. I don't think so.

Q. Did the Maui Chamber issue a statement against the strike? A. I don't remember.

Mr. Resner: No further questions.

Mr. Crockett: No questions.

ALLAN H. EZELL

Direct Examination

By Mr. Resner:

Q. Mr. Ezell?

Witness: Yes.

Q. You are, I understand, the branch manager
of Hawaiian Air Lines? A. Yes, sir.

Q. What is your residence, Mr. Ezell?

A. Waikapu, Maui.

Q. How long have you lived in the Territory?

A. Eight years.

Q. And what schooling have you had?

A. Two years of university.

Q. What prior jury experience?

A. None.

Q. This is your first service? A. Yes.

Q. What is your race? [440]

A. Caucasian.

Q. What is your attitude towards the ILWU?

A. Neutral.

Q. You are neither for or against it?

A. Neutral, except that I feel, of course—I have
done a lot for the working man—have had plenty
of experience working with my hands too.

Q. So you favor organized labor because it does
good for working people?

A. It has done good.

Q. With regard to the pineapple strike, what
is your attitude toward that?

A. I was in hopes it would come to an early
conclusion.

(Testimony of Allan H. Ezell.)

Q. Because you didn't want to see a strike occur?

A. Just didn't feel that—that it would damage the Territory's economy.

Q. Just what was your attitude towards the workers on strike who are defendants in this case?

A. No feeling whatsoever.

Q. Do you think that in connection with the pineapple strike there are two sides to it—that the Factors might be wrong as well as the union demands excessive?

A. There are generally two or three sides—the third side being a combination of both.

Q. You think you would be fair as a grand juror? A. I think I could. [441]

Mr. Resner: No further questions.

Mr. Crockett: No questions.

Mr. Resner: Is Mr. Fong here?

The Court: Mr. Fong is the gentleman I excused until tomorrow morning.

Mr. Resner: Oh, yes. Mr. Goodness is not here, I take it. Mr. Holt?

Witness: Yes.

WALTER HOLT

Direct Examination

By Mr. Resner:

Q. You are with the Board of Forestry of the Territory? Witness: Yes, sir.

Q. How long have you lived in the Territory?

A. Nearly 44 years.

Q. And what schooling have you had, Mr. Holt?

A. Graduated from the University of Hawaii.

Q. What prior jury experience? A. None.

Q. Do you know the Jury Commissioners personally? A. Yes, I do.

Q. You do? A. Yes.

Q. And your race is what? A. Caucasian.

Q. And what is your attitude about the ILWU?

A. I believe in organized labor. [442]

Q. As such, that includes the ILWU, I take it?

A. I assume so, yes.

Q. You think that, Mr. Holt?

A. Yes, I do.

Q. What was your attitude toward the recent pineapple strike?

A. Well, I was hoping it wouldn't occur because I was afraid it would affect the Territorial employees' bonus.

(Laughter.)

Q. Did it disturb your bonus?

A. I beg your pardon?

Q. It didn't disturb your bonus?

A. Fortunately not.

Q. What is your attitude toward the workers

(Testimony of Walter Holt.)

who participated in the pineapple strike—the defendants here?

A. I believe I have an impartial viewpoint.

Q. You have an impartial view toward the strike itself?

A. Yes, I do.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions.

Mr. Resner: Mr. Maeda—he is the public accountant. He is not here. Mr. Peterson went to some fair—County Fair business. We are supposed to call him. Mr. Plunkett?

Witness: Right here. [443]

JOHN PLUNKETT

Direct Examination

By Mr. Resner:

Q. You have been on the Grand Jury list for a long time. This is your first service?

Witness: No, this is my third, I think.

Q. Your residence?

A. Keanae, Maui.

Q. Your business?

A. Supervisor, East Maui Irrigation Company, Nahiku and Keanae.

Q. Is the East Maui Irrigation Company connected with any other concerns?

A. One is—connected with H. C. & S. and M. A. Company.

Q. And in turn, that is, with Alexander & Baldwin?

A. I believe so.

(Testimony of John Plunkett.)

Q. How long have you lived in the Territory?

A. All my life.

Q. What schooling have you had?

A. Kamehameha School.

Q. And what is your race, Mr. Plunkett?

A. Hawaiian-Irish.

Q. What is your attitude toward the ILWU?

A. Well, as man to man, because I handle labor, some of them are all right; some of them are not quite fair.

Q. What do you mean by that?

A. As I say, some are all right. As far as their ILWU is concerned, I have no objection about them. [444]

Q. I gathered from what you said that you have had some objection to something and I was trying to find out what it was.

A. No objection at all.

Q. As far as the union is concerned?

A. Yes.

Q. What about the defendants in this case whose cases it is proposed to bring before the Grand Jury—that were involved in the pineapple strike?

A. I don't know them so I don't have any feeling against them.

Q. What was your attitude about the strike itself?

A. I thought it was wrong at the beginning, but the demand was more than what labor ought to have and that was no time to have a strike go on. That was my feeling at that time.

(Testimony of John Plunkett.)

Q. Did you feel there could be two sides to the dispute?

A. Oh, yes, there is always two sides.

Q. That the industry might be wrong in its attitude? Did you feel that could be so?

A. I felt that way too.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions.

Mr. Resner: Mr. Reinhart?

Witness: Yes. [445]

PAUL REINHART

Direct Examination

By Mr. Resner:

Q. You live where, Mr. Reinhart?

Witness: Maunaloa, Molokai.

Q. What company are you connected with?

A. Libby, McNeill & Libby.

Q. They were one of the concerns involved in the recent pineapple strike? A. Yes.

Q. What is your position there?

A. Assistant plantation manager.

Q. How long have you lived in the Territory?

A. Since 1938, with the exception of four years in the army.

Q. What schooling have you had?

A. Five years college.

Q. Your race is caucasian? A. Yes.

(Testimony of Paul Reinhart.)

Q. What is your attitude toward the ILWU?

A. Impartial.

Q. You give that answer in view of the position you hold with the Libby Company?

A. That's right.

Q. What is your attitude toward the defendants here whose cases it is proposed to bring before the Grand Jury in view of the fact that they were involved in the recent pineapple strike?

A. Impartial. [446]

Q. You have any feeling at all? A. None.

Q. What is your attitude toward the pineapple strike?

A. I didn't want to see a pineapple strike. Naturally I wouldn't want to see one. But there was one, so we made the best of it.

Q. But what is your attitude toward the union?

A. Impartial. It is up to the individual. If any individual wants to join the union, that is up to him.

Q. But what was your attitude toward the strike itself—the fact that the union did call a strike?

A. I didn't want to see a strike.

Q. Is Libby, McNeill & Libby affiliated with the Hawaiian Employers' Council? A. They are.

Q. And the Hawaiian Employers' Council handled the pineapple strike for the industry, is that correct?

A. As far as I know, they did. Now I don't know what went on in Honolulu.

(Testimony of Paul Reinhart.)

Q. To your knowledge, that is what happened?

A. That's right.

Mr. Resner: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Reinhart, Maunaloa that you refer to—that is on the Island of Molokai? [447]

Witness: Yes, sir.

Q. And so far as you know, was Libby, McNeill & Libby's pineapple division on the Island of Molokai in any wise concerned with the incident that occurred on Lanai? A. Not that I know of.

Q. Do you know whether Libby, McNeill & Libby is a local corporation or is that a foreign corporation—that is, a Mainland corporation?

A. Mainland corporation.

Mr. Crockett: That is all.

Mr. Resner: Mr. Tam is here?

Witness: Yes.

ANTHONY A. TAM

Direct Examination

By Mr. Resner:

Q. What is your residence, Mr. Tam?

Witness: Makawao, Maui.

Q. How long have you lived in the Territory?

A. Forty years.

Q. And your business is what?

A. I am a farmer.

(Testimony of Anthony A. Tam.)

Q. Oh, yes. Lower Paia

A. No, Makawao.

Q. Your race is Chinese? A. Chinese.

Q. What schooling have you had?

A. Three and a half years college.

Q. What jury experience have you had? [448]

A. Trial jury, once.

Q. Do you know the Jury Commissioners?

A. Yes, I do.

Q. In this case?

A. The Commissioners, yes.

Q. Have you known them long?

A. Well, I have known Pombo practically all my life. Judge Wirtz—since I was on the trial jury. Mr. Chatterton—I have seen him around.

Q. What is your attitude toward the ILWU?

A. I believe in organized labor.

Q. And when you say that, does that mean that you believe in the ILWU as a part of organized labor? A. Yes.

Q. Is that right? A. Do I believe what?

Q. Is that right—you say you believe in organized labor? A. I do.

Q. That is, you believe in the right of men to join unions of their own choosing? A. Yes.

Q. And does that include the ILWU in your judgment? A. Yes.

Q. Do you have any feeling about the ILWU in this particular pineapple strike? A. No.

Q. Do you have any feeling about these defend-

(Testimony of Anthony A. Tam.)

ants as [449] members of the ILWU involved in the pineapple strike? A. No.

Q. Do you feel you are impartial as far as you are concerned? A. I do.

Q. Is that right? A. Yes.

Mr. Resner: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Tam, you say you are a farmer. Do you own your own farm?

Witness: I own my own farm.

Q. And do you have any employees?

A. I have no regular employees, but I do hire once in a while when I need help. I do most of the work myself.

Q. And what type of farm do you operate?

A. Grass and raise cattle—cattle farm.

Mr. Crockett: That is all.

CHARLES E. THOMPSON

Direct Examination

By Mr. Resner:

Q. Mr. Thompson, you have been on the jury before, sir?

Witness: Yes, sir.

Q. How many times—on the Grand Jury or trial jury? [450]

A. On the Grand Jury and trial jury ten to twenty times.

(Testimony of Charles E. Thompson.)

Q. You are retired now?

A. Well, I never did work for nobody. So I was retired 50 years ago.

Q. You were retired when you started?

A. I was retired when I started.

Q. A very envious position.

A. Never did work for nobody, so I retired 50 years ago.

Q. You live where? A. Kihei, Maui.

Q. How long—have you been in the Territory all your life? A. Born and raised here.

Q. What schooling have you had?

A. Only went as far as public school — 8th grade.

Q. And I assume you have known the Jury Commissioners for a long time? A. Yes.

Q. Your race is what?

A. German-Hawaiian.

Q. And what is your attitude toward the ILWU? A. Impartial.

Q. You are sure about that? A. Yes.

Q. What is your attitude toward the defendants in this case whose cases it is proposed to bring before [451] the Grand Jury?

A. That is their right to strike, and when they strike it is up to them—and that is their privilege—that is their privilege.

Q. What was your attitude toward the recent pineapple strike?

A. That was perfectly all right. They wanted to

(Testimony of Charles E. Thompson.)

strike—that is up to them. They demanded higher wages. If they are entitled to it, they have a perfect right to strike.

Q. Do you have any stock interests in any of the pineapple companies? A. No.

Q. You are what we call an independent citizen, Mr. Thompson, is that right?

A. I was broke 50 years ago and I am still broke.

Mr. Resner: Thank you.

Mr. Crockett: I have no further questions.

WAI KEN TOM

Direct Examination

Q. Mr. Tom?

Witness: Yes.

Q. You are the office manager of the Mutual Telephone Company?

A. I am supervisor of revenue.

Q. Where do you live?

A. Wailuku, Maui.

Q. How long have you lived in the Territory?

A. All my life.

Q. What schooling have you had?

A. Finished the St. Anthony's School—local St. Anthony's School.

Q. What grade is that equivalent to?

A. I believe that was the ninth at that time.

Q. And your race is Chinese?

A. Chinese.

(Testimony of Wai Ken Tom.)

Q. Have you had prior jury experience?

A. Yes, one term. Trial.

Q. And this is your first term on the Grand Jury?

A. That's right.

Q. What is your attitude toward the ILWU?

A. Impartial. I believe in organized labor.

Q. What was your attitude toward the recent pineapple strike?

A. Well, I didn't take much interest in it—didn't have time to read.

Q. You had no feeling about it then?

A. No.

Q. What is your attitude toward these men who are charged here because of their participation in it?

A. Impartial.

Q. You have no feeling in that regard?

A. No.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions. [453]

JOSEPH H. TRASK

Direct Examination

By Mr. Resner:

Q. Mr. Trask—is he here?

Witness: Yes.

Q. You are the last on the list, Mr. Trask.

A. Good.

Q. What is your residence?

A. Wailuku.

Q. You are the manager of the Bank of Hawaii?

(Testimony of Joseph H. Trask.)

A. That's right.

Q. What is your race, Mr. Trask?

A. Caucasian.

Q. And how long have you lived in the Territory?
A. About 33 years.

Q. And what schooling have you had?

A. I have had four years of preparatory school.

Q. How many prior juries, if any, have you served on?
A. This is the first.

Q. Have you served on the trial jury?

A. No.

Q. Do you know the Jury Commissioners?

A. Oh, yes.

Q. Have you known them for a long time personally?
A. Very long time.

Q. What is your attitude toward the ILWU?

A. Impartial. I haven't made no opinions on the ILWU.

Q. Do you have any attitude toward labor?

A. No. [454]

Q. Have you expressed any attitude?

A. No.

Q. What about the recent pineapple strike—did you have any opinion about that?

A. Well, for economic reasons, I would rather see the strike not occur, but I didn't form any opinions.

Q. What about the defendants, the accused here, whose cases it is proposed to present before the Grand Jury—have you any feeling about them be-

(Testimony of Joseph H. Trask.)

cause they were involved in the recent pineapple strike? A. No, I would be impartial.

Q. No feeling? A. No feeling whatsoever.

Mr. Resner: I have no further questions of Mr. Trask.

Mr. Crockett: I have no questions, if the Court please.

Mr. Resner: That is all the jurors here, your Honor. The others are Mr. Thompson and Mr. Peterson.

The Court: You are all through with these gentlemen? Does the Prosecution desire them any more?

Mr. Crockett: No, we do not.

The Court: Gentlemen, you are excused.

(Witnesses excused.)

Mr. Resner: If your Honor please, I propose to put on all of the defendants for limited purposes—merely to identify themselves in much the same manner we identified the jury. [455]

The Court: Have you notified the Clerk as to what type of interpreter we are going to have?

Mr. Resner: I don't think we will need any. At least we will try without one.

The Court: You have made such a toil for the Reporter, trying to get the results.

Mr. Resner and Mr. Crockett, I think there is one matter that might be dealt with. While the Court takes judicial notice of its files, yet for the purpose of anyone handling the record what is in

the Court's mind wouldn't be readable. There is upon the records of this court and I have before me here certified copies of the Clerk's minutes of the drawing of the 1947 Grand Jury. I would have it marked for identification, and in the interim between now and tomorrow if you will just inspect it. If you have any objection, call my attention to it. It is a certified copy of the minutes of the Clerk at that drawing which seems to me to be a part of the record.

Deputy Clerk: Court's Exhibit——

The Court: Court's Exhibit No. 2 for identification. And in the interim, between now and tomorrow morning, you are to inspect it.

Mr. Resner: Call Mr. Barbosa—Diego Barbosa.

DIEGO BARBOSA

having been first duly sworn, was examined and testified as follows:

The Court: You understand?

(Witness nodding.)

Deputy Clerk: Please state your name.

Witness: Diego Barbosa.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Barbosa?

Witness: I live at—I stay Lanai.

Q. Are you a citizen or not?

A. From Philippine Islands.

(Testimony of Diego Barbosa.)

Q. Citizen of the Philippine Islands?

A. Yes.

Q. How long have you been in the Territory of Hawaii? A. I come Hawaii 1928.

Q. What is your occupation? What kind of work do you do? A. Works in the pineapple.

Q. Are you a member of the ILWU? Are you a member of the International Longshoreman's and Warehouseman's Union? A. Yes, the union.

Q. Were you on strike in the recent pineapple strike? A. Yes.

Q. Were you arrested in connection with the strike? A. I forgot. [457]

Q. Were you arrested in connection with the strike—yes or no. A. Yes, arrested strike.

Mr. Resner: That is all.

The Court: Just a minute.

Mr. Crockett: No questions, if the Court please.

(Witness excused.)

Mr. Resner: John Maile.

JOHN MAILE

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: John Maile.

Direct Examination

By Mr. Resner:

Mr. Resner: Where do you live, Mr. Maile?

(Testimony of John Maile.)

Witness: Lanai City—Kamalapau, Lanai.

Q. What kind of work do you do?

A. Crane operator.

Q. For whom?

A. Hawaiian Pineapple Company.

Q. What is your race?

A. Hawaiian-white.

Q. Hawaiian? A. Hawaiian.

Q. Are you a citizen? A. Yes, sir. [458]

Q. Registered voter. A. That's right.

Q. Are you a member of the ILWU?

A. I do.

Q. Were you in the recent pineapple strike?

A. That's right.

Q. Were you arrested in connection with the strike? A. That's right.

Q. No further questions. Oh, what schooling have you had, Mr. Maile? How far did you go to school? A. Seventh grade.

Q. Being what school?

A. Grammar school.

Cross-Examination

By Mr. Crockett:

Mr. Crockett: You say you were arrested in connection with the strike. Just what were you charged with doing?

Mr. Resner: If your Honor please, I am going to object to that. The record speaks for itself. All we are seeking to do is identify these defendants—not go into facts.

(Testimony of John Maile.)

The Court: You opened it up with your question. Counsel has a right to ask what he means by the pineapple strike.

Mr. Resner: With what is in the complaint is what he is charged with. [459]

The Court: That is not necessarily what he may mean by his answer and you may mean by your question. Read the question, Miss Reporter.

Reporter: (Reading) "Q. You say you were arrested in connection with the strike. Just what were you charged with doing"?

Witness: I think while picketing.

The Court: What was the answer?

Witness: I think while picketing.

The Court: Is that what you understand you were charged with doing? Picketing?

Witness: I think so.

Mr. Crockett: Whereabouts did the picketing take place? A. At the harbor there.

Q. You mentioned that you are a member of the ILWU and that you were arrested in connection with the strike. Was that picketing that you mentioned being engaged in—was that ordered by the ILWU?

Mr. Resner: If your Honor please, I think that irrelevant. I think that on cross-examination as far as Counsel has a right to do is as far as the direct examination takes him.

The Court: Objection overruled. Read the question, Miss Reporter.

(Testimony of John Maile.)

Reporter: (Reading) "Q. You mentioned that you are a member of the ILWU and that you were arrested in connection with the strike. Was that picketing [460] that you mentioned being engaged in—was that ordered by the ILWU"?

Witness: I don't know.

The Court: What is the answer?

Witness: I don't know.

Mr. Crockett: How did you happen to be picketing if you don't know whether it was ordered by anybody of the ILWU?

Witness: Say that again.

Mr. Crockett: Please read it, Miss Reporter.

Reporter: (Reading) "Q. How did you happen to be picketing if you don't know whether it was ordered by anybody of the ILWU"?

Witness: We just come out and picket—that's all.

Mr. Crockett: You mean, then, that the ILWU didn't tell you to picket?

Mr. Resner: If your Honor please, the question is irrelevant. It has been asked and answered already.

The Court: Objection overruled.

Mr. Crockett: Will you read the question, Miss Reporter?

Reporter: (Reading) "You mean, then, that the ILWU didn't tell you to picket"?

Witness: No.

Mr. Crockett: Did anybody tell you to picket?

(Testimony of John Maile.)

A. We just come out and picket. That's all I know. [461]

Q. You picketed of your own volition? That is, nobody told you to picket?

A. Say that again.

Q. What is that?

A. I can't understand you.

Q. Read the question again.

Reporter: (Reading) "You picketed of your own volition? That is, nobody told you to picket"?

Witness: During strike, we just come out and picket—that's all.

Mr. Crockett: Will you answer the last question I gave you.

Mr. Resner: He did answer it, if the Court please. I submit the witness has just answered the question. He said, "We just come out and picket."

Mr. Crockett: My question was directed to whether or not he was told by anyone to picket.

The Court: That is his answer to that particular question.

Mr. Crockett: You mean, then, that nobody in connection with the ILWU told you to come out and picket?

Mr. Resner: I am going to object to that as having been answered and answered on two or three prior occasions.

The Court: Objection overruled. Read the question, Miss Reporter.

Reporter: (Reading) "You mean, then, that

(Testimony of John Maile.)

nobody [462] in connection with the ILWU told you to come out and picket”?

Witness: I am connected with the ILWU. We just come out and picket while strike is on.

The Court: Were you an officer?

Witness: No.

Mr. Crockett: Whereabouts did this picketing occur which you said you had connection with?

A. Say that again.

Q. Where did the picketing occur you say you were arrested in connection with?

A. At Lanai—Kamalapau—at the dock there.

Q. At the dock? A. That’s right.

Q. That was, according to the complaint, was on a Monday afternoon—of July 14th?

A. I don’t remember.

Q. And did you or did you not remember any person telling you to go down and picket that afternoon?

Mr. Resner: If your Honor please, that has been asked and answered a number of times already.

The Court: I think it has at this time, Mr. Resner. Objection sustained.

Mr. Crockett: If the Court please, I assume the—what I have in mind is this—you know what you are charged with in this particular case?

Witness: I get no idea.

Mr. Crockett: Then if you don’t know who sent you down there, then your picketing was not in connection with the strike. It was not authorized by the ILWU.

(Testimony of John Maile.)

Mr. Resner: If the Court please, I object to that as being argumentative.

The Court: Objection sustained.

Mr. Crockett: No further questions.

Mr. Resner: That is all, Mr. Maile.

(Witness excused.)

The Court: We will take a recess until nine o'clock tomorrow morning.

(The Second Circuit Court adjourned at 3:59 p.m.) [464]

Thursday, September 18th, 1947—9:00 a.m.

Deputy Clerk: Criminal No. 2412—Territory of Hawaii vs. Abraham Makekau, et al., and Criminal No. 2413—Territory of Hawaii vs. Diego Barbosa, et al.

Mr. Resner: Ready, if your Honor please.

Mr. Crockett: Ready for the Prosecution, if the Court please.

Mr. Resner: Call Mr. Fong.

HENRY S. S. FONG

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Please give your full name.

Witness: Henry S. S. Fong.

Mr. Resner: Mr. Fong, where do you live?

(Testimony of Henry S. S. Fong.)

Witness: Keokea, Kula, Maui.

Q. And how long have you lived there?

A. Ever since I was a child.

Q. How long has that been now?

A. Forty-four years.

Q. And what is your business?

A. Merchant and contractor.

Q. And you are a member of the Chinese race?

A. Yes. [465]

Q. How long have you been on the Grand Jury?

A. About two years.

Q. This is your second term? A. Yes.

Q. Before that time, were you on the trial jury?

A. Trial jury, yes.

Q. And how long were you a trial juror?

A. One year.

Q. Are you personally acquainted with the Jury Commissioners—that is, Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Mr. Chatterton and Judge Wirtz, yes.

Q. Do you know Mr. Pombo? A. No.

Q. I see. How long have you known Mr. Chatterton?

A. Well, ever since he was the manager of the Kahului Store.

Q. And how long have you known Judge Wirtz?

A. Since about three years, I guess. Since he was living up Kula.

Q. Now, you are familiar with the recent pineapple strike? A. Yes.

(Testimony of Henry S. S. Fong.)

Q. You are—I mean you know about the recent pineapple strike? A. Yes, I know.

Q. And in your duties as a grand juror, do you know that the cases that this case is all about grew out [466] of the pineapple strike?

A. Not on Lanai.

Q. I beg your pardon?

A. I don't know anything about this case.

Q. What I am getting at is do you know that the defendants who are in court—that their cases grew out of the pineapple strike in Lanai—that that is what they are about? A. No.

Q. You don't know anything about these defendants? A. I don't know anything.

Q. I beg your pardon? A. I don't know.

Q. You don't know? A. No.

Q. Do you know anything about the pineapple strike? A. Well, I heard about it.

Q. I mean is it a matter of common knowledge?

A. I don't quite get you.

Q. Is the pineapple strike something that everybody in Maui knows about? A. Yes, sir.

Q. Do you know that a number of members of the Longshoreman's Union, the ILWU, that is, were arrested in connection with the pineapple strike?

A. No.

Q. You do not know that? A. No. [467]

Q. Do you know anything about the ILWU?

A. No.

Q. You know nothing about these defendants?

(Testimony of Henry S. S. Fong.)

A. No.

Q. Do you have any feeling about anybody who was involved in the strike? A. No.

Q. You have no feeling at all?

A. No feeling.

Q. Is that right? A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: If the Court please, just for the information and purpose of the record, this Mr. Fong was a member on the active list of grand jurors who was supposed to have appeared yesterday and who was excused by the Court on account of being a contractor.

The Court: Yes, I recognize the name and I was going to inform the record myself as to that.

Mr. Crockett: I have no questions of Mr. Fong.

The Court: I would like to ask him a question in view of Counsel's questions to enlighten myself.

Examination by the Court

The Court: Mr. Fong, you say you have been on the Grand Jury two years?

Witness: Yes. [468]

The Court: Do you mean that you have served on the panel of the Grand Jury that has considered cases two different years or that you were simply on the list?

Witness: Two terms.

The Court: You have been two terms on the active panel?

Witness: Yes.

(Testimony of Henry S. S. Fong.)

The Court: When was the first term?

Witness: One in 1946 and one in 1947.

The Court: That is all.

Mr. Crockett: Might I——

Cross-Examination

By Mr. Crockett:

Mr. Crockett: Were you called and sworn as a grand juror in 1946?

Witness: Yes, I did. I came. I am pretty sure—in 1946.

The Court: What part of the year?

Witness: Well, I don't remember.

Mr. Crockett: How many times have you served this year—in 1947? That is, how many sessions have you attended? A. Two times, I think.

Q. You have attended two sessions this year, haven't you?

A. One downstairs and one up here.

Mr. Crockett: I think, if the Court please, I think what the witness is referring to is that during the early part of the year, we had a session at which time we used this court room; and the last session that we had, we had it down in the library of the court while this court room was being repaired.

Witness: Yes.

Mr. Crockett: In other words, both those times were this year, Mr. Fong?

Witness: Yes.

Q. Now, you still think you served—actually ap-

(Testimony of Henry S. S. Fong.)

peared and served in 1946 or have you confused yourself with the two times this year?

A. Two times this year. I don't remember last year—1946.

Q. So you think now you did not actually serve in 1946?

The Court: Yes or no.

Witness: I don't remember in 1946.

Mr. Crockett: So when you refer to serving twice, you are referring to the two sessions in——

A. 1947.

Q. The 1947 term. That is all.

Redirect Examination

By Mr. Resner:

Q. How much schooling have you had, Mr. Fong?

Witness: Up to seventh grade. [470]

Q. Up to the seventh grade? A. Yes.

Q. Is there any question in your mind about anything that has been said here to you this morning? A. What is that?

Q. Is there anything that has been said here to you this morning that you have any question about?

A. No.

Q. That you don't understand?

(No response.)

Q. Do you understand everything that has been going on here?

A. I don't know why you folks bring me down here for.

(Testimony of Henry S. S. Fong.)

Q. I mean do you understand what has been said here?

A. What do you mean by "consent"?

The Court: Do you understand what has been going on here this morning?

Witness: Oh, yes.

Mr. Resner: You didn't get the word that was used, is that it?

Witness: Yes, I don't get the word.

Q. What I want to know is—do you know what is going on here?

Mr. Crockett: I submit, if the Court please, that is an indefinite proposition to ask the witness what has been going on. All he knows is what has been asked and the questions answered. There are a lot of people who have been present in court all the time who perhaps don't specifically understand what is going on.

Mr. Resner: That is all.

The Court: That is all, Mr. Fong.

(Witness excused.)

Mr. Resner: Call Mr. Degamo.

The Court: You want Mr. Fong any more—either of you?

Mr. Resner: No.

Mr. Crockett: No.

VICTOR DEGAMO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Victor Degamo.

Direct Examination

By Mr. Resner:

Q. Your name is Victor Degamo?

Witness: Yes.

Q. Where do you live? A. Lanai City.

Q. How long have you lived there?

A. 1939—about seven years ago.

Q. What kind of work do you do?

A. Truck work.

Q. Truck driver? A. Yes. [472]

Q. What is your race, Mr. Degamo? Your nationality? A. Filipino.

Mr. Resner: I might say for the record, your Honor, that the terms “race” and “nationality” probably have been used indiscriminately here—that is, that strictly speaking, the races of mankind are limited and there are a number of nationalities among them, and I suppose the distinction we make here is that of between caucasian and non-caucasian.

Now, are you a citizen, Mr. Degamo?

Witness: No.

Q. Are you a member of the ILWU?

A. Yes.

Q. You are?

(Witness nodding.)

(Testimony of Victor Degamo.)

Q. You have been at Lanai working as a worker in the pineapple industry since 1939?

(Witness nodding.)

Q. Down until the present time?

(Witness nodding.)

Q. Is that right? A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

Mr. Resner: Harry Kapena Kaopuiki? [473]

HARRY KAPENA KAOPUIKI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Harry Kapena Kaopuiki.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Kaopuiki?

Witness: Lanai.

Q. How long have you lived there?

A. All my life.

Q. You were born there, were you?

A. Yes.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

(Testimony of Harry Kapena Kaopuiki.)

A. Hawaiian.

Q. Have you gone to school here? A. Yes.

Q. What school? A. Lanai.

Q. At Lanai? A. Yes.

Q. What grade did you reach?

A. Fourth grade.

Q. Fourth grade? A. Yes.

Q. Are you a member of the ILWU? [474]

A. Yes.

Q. What kind of work do you do?

A. Crane operator.

Q. Crane operator? A. Yes.

Q. For what company?

A. Hawaiian Pine.

Q. Hawaiian Pine? A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

Mr. Resner: Isami Nitta?

ISAMI NITTA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Isami Nitta.

The Court: Say it out loud, so I can hear it.

Witness: Isami Nitta.

(Testimony of Isami Nitta.)

Direct Examination

By Mr. Resner:

Q. Isami Nitta—is that right?

Witness: Yes.

Q. Where do you live, Mr. Nitta?

A. Kamalapau, Lanai.

Q. How long have you lived there? [475]

A. Twenty years.

Q. Where were you born?

A. At Nalehu, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. What kind of schooling have you had?

A. Went to the 8th grade.

Q. In what school? A. Waiohinu School.

Q. What kind of work do you do?

A. Crane operator.

Q. And how long have you done that kind of work? A. About 20 years.

Q. Are you employed by the Hawaiian Pine-apple Company? A. Yes.

Q. At Lanai? A. Yes.

Q. And how long have you been employed there?

A. Twenty years.

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

Mr. Resner: Oh, one further question. What is your nationality or race?

(Testimony of Isami Nitta.)

Witness: Japanese.

Mr. Resner: Japanese. That is all.

(Witness excused.) [476]

AH SING AH HO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your name.

Witness: Ah Sing Ah Ho.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. I didn't hear that.

A. Kamalapau, Lanai.

Q. Where were you born?

A. Nalehu, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. How far did you go to school?

A. To the 8th grade.

Q. What school? A. Pahala School.

Q. How long have you lived in Lanai?

A. Ten years.

Q. What kind of work do you do?

A. Crane operator.

Q. For what company?

A. Hawaiian Pineapple Company.

(Testimony of Ah Sing Ah Ho.)

Q. How long have you been employed there?

A. Ten years.

Q. Ten years? [477] A. Yes.

Q. Are you a member of the ILWU?

A. Yes.

Q. Did you ever get a jury questionnaire?

A. I did.

Q. When did you get it?

A. Sometime this year, I guess.

Q. Did you fill it out and send it back?

A. Yes.

Q. Was it this year or last year?

(No response.)

Q. 1946 or 1947?

A. I don't remember that.

Q. You are not sure of the year?

A. Not sure, but I know I filled it.

Q. And sent it back? A. Yes.

Q. Are you a member of the ILWU?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian-Chinese.

Mr. Crockett: How old are you?

Witness: 37.

Mr. Crockett: No further questions.

(Witness excused.)

Mr. Resner: James Kia Aikala? [478]

JAMES KIA AIKALA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: James Kia Aikala.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. Fourteen years.

Q. Where were you born?

A. Haiku, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian.

Q. You are Hawaiian? A. Yes.

Q. What school did you go to?

A. I didn't been to school.

Q. Did you go to school at all? A. No.

Q. You have no formal education?

A. No.

Q. What kind of work do you do?

A. Crane operator.

Q. Where? [479] A. At Lanai.

Q. With the Hawaiian Pineapple Company?

A. Yes.

Q. How long have you had that kind of work?

A. Fourteen years.

(Testimony of James Kia Aikala.)

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: How old are you?

Witness: Thirty-one.

Mr. Crockett: How old?

Witness: Thirty-one.

Mr. Crockett: No further questions.

(Witness excused.)

SHIGERU YAGI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Shigeru Yagi.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. About eight years.

Q. How old are you? A. Thirty years.

Q. Where were you born?

A. Hilo, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. What schooling have you had?

A. Twelve years.

(Testimony of Shigeru Yagi.)

Q. Whereabout—what school?

A. Hilo High School.

Q. Did you go all the way through?

A. Yes, I graduated.

Q. What kind of work do you do?

A. I am a crane operator.

Q. In what company? A. Hawaiian Pine.

Q. That is at Lanai? A. Yes.

Q. How long have you been employed there?

A. Almost ten years.

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

BASILISO ARRUIZA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Basiliso Arruiza. [481]

Direct Examination

By Mr. Resner:

Mr. Resner: Your name is Basiliso Arruiza?

Witness: Yes.

Q. Where do you live? A. Lanai City.

Q. How long have you lived there?

A. Twenty months.

Q. Where were you born?

(Testimony of Basiliso Arruiza.)

A. Philippine Islands.

Q. Philippine Islands? You are not a citizen of the United States? A. No.

Q. You are a citizen of the Philippine Islands, is that right? A. Yes.

Q. Your race and nationality is Filipino?

A. Filipino.

Q. How long have you been—I withdraw that. What kind of work do you do?

A. Truck driver.

Q. By whom are you employed?

A. Hawaiian Pine.

Q. How long have you had that work?

A. Sixteen months.

Q. Are you a member of the ILWU?

A. Yes.

Q. How old are you? [482]

A. Thirty-eight.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. How long have you been in the Territory of Hawaii?

Witness: Twenty months.

Q. And where did you live before that?

A. Philippine Islands—just one of the new-comers.

Q. Just one of the new-comers? A. Yes.

Q. In other words, you worked no other place?

(Testimony of Basiliso Arruiza.)

You came from the Philippine Islands and worked on Lanai, and that is the first place?

A. Yes, first place.

Q. And only place you worked?

A. Only place.

Mr. Crockett: No further questions—oh, just one other question. How much schooling did you have in the Philippine Islands?

Witness: Fourth grade.

Q. Fourth grade? A. Yes.

(Witness excused.)

Mr. Resner: I see Mr. Peterson is in the court room; so we will put him on. Mr. Peterson? [483]

HERBERT SIDNEY PETERSON

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Herbert Sidney Peterson.

Direct Examination

By Mr. Resner:

Q. What is your residence, Mr. Peterson?

Witness: 879 First Street, Kahului.

Q. Where were you born?

A. Nueces, Texas.

Q. What is your age?

(Testimony of Herbert Sidney Peterson.)

A. Last birthday, I was 39.

Q. What kind of education have you had?

A. High school education.

Q. In Texas? A. In Texas.

Q. How long have you been in the Territory?

A. I arrived in the Territory February, 1931.

Q. What kind of work do you do?

A. Store manager.

Q. What store is that? A. Puunene Store.

Q. Is that owned by one of the companies?

A. It is a branch store of the Kahului Store, which is owned by Hawaiian Commercial & Sugar Company.

Q. Is that one of the Alexander & Baldwin enterprises? A. It is. [484]

Q. You are a member of the caucasian race?

A. I am so taken and accepted, yes.

Q. How long have you served on the Grand Jury?

A. This is my first term. I sat on two sessions.

Q. In the year 1947?

A. 1947, that's right.

Q. Have you ever served as a trial juror?

A. Never have.

Q. Are you personally acquainted with the Jury Commissioners—Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes, having been a resident of Maui for twelve years, I know them all.

Q. You know them all? A. Yes.

(Testimony of Herbert Sidney Peterson.)

Q. Are you familiar with the ILWU?

A. We have an ILWU local on the plantation, and my store employees are members of the ILWU.

Q. Was your company involved in the recent pineapple strike? A. They were not.

Q. Yours is a sugar company?

A. Correct.

Q. What is your attitude toward the ILWU, Mr. Peterson?

A. I believe I have an unbiased attitude towards them.

Q. What is your attitude towards the recent pineapple strike?

A. I don't know enough about the recent pineapple strike to form an opinion. [485]

Q. What is your attitude toward the officials of the ILWU?

A. I have gotten along very amicably with the officials of the ILWU.

Q. Do you know that the defendants in this particular case were arrested in connection with the recent pineapple strike?

A. That is my understanding.

Q. At Lanai—is that your understanding?

A. Yes.

Q. Do you have any feeling about these defendants because of that fact?

A. I don't know anything about the case. The case was never presented to us. I can't form an opinion under those circumstances.

(Testimony of Herbert Sidney Peterson.)

Q. Do you have any feeling about any of the workers who were involved in the pineapple strike?

A. No, none whatsoever.

Mr. Resner: No further questions.

Mr. Crockett: No questions. For the purposes of the record, if the Court please, I think the record should show that Mr. Peterson is also one of the persons who was chosen and sworn in as a grand juror of the 1947 session.

The Court: You are that same Peterson who is on this list of—this active panel?

Witness: Yes, your Honor.

Mr. Resner: I think you can be excused. [486]

The Court: You may go about your affairs, Mr. Peterson.

Witness: Thank you.

(Witness excused.)

Mr. Resner: Mr. Midori Oda?

MIDORI ODA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Midori Oda.

Direct Examination

By Mr. Resner:

Q. Your name is Midori Oda?

(Testimony of Midori Oda.)

Witness: Yes.

Q. How old are you? A. Thirty-five.

Q. Where were you born?

A. Lahaina, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Japanese.

Q. What kind of work do you do?

A. Crane operator.

Q. At what company? A. Hawaiian Pine.

Q. How long have you had that employment?

A. Ten years.

Q. What schooling have you had?

A. Kam III School.

Q. What—how many grades did you go to in school? A. Fourth grade.

Q. At what school?

A. Kam III School, in Lahaina, Maui.

The Court: Kamehameha III School, Mr. Resner.

Mr. Resner: Are you a member of the ILWU?

Witness: Yes.

Q. And you have been employed at Hawaiian Pine Company for the last few years?

A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: No questions.

(Witness excused.)

SHIGEYUKI MATSUURA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Shigeyuki Matsuura.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. Nineteen years. [488]

Q. Where were you born?

A. Lahaina, Maui.

Q. You are a citizen of the United States?

A. Yes, I am.

Q. Your race or nationality is what?

A. Japanese.

Q. What school did you go to?

A. Kam III School.

Q. How many grades did you reach?

A. Fifth grade.

Q. What kind of work do you do on Lanai?

A. Crane operator.

Q. For what company?

A. Hawaiian Pineapple.

Q. How long have you been employed there?

A. Nineteen years.

Q. Are you a member of the ILWU?

A. Yes.

Q. You are? A. Yes.

(Testimony of Shigeyuki Matsuura.)

Mr. Resner: That is all.

Mr. Crockett: No further questions.

(Witness excused.)

ABRAHAM MAKEKAU

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Abraham Makekau. [489]

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Makekau?

Witness: Lanai City.

Q. How long have you lived there?

A. About one year.

Q. Where were you born?

A. Hilo, Hawaii.

Q. How old are you? A. Twenty-six

Q. You are a United States citizen?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian-Chinese.

Q. What kind of work do you do?

A. I am a truck driver during season—and off season, I am a painter.

Q. This is at Lanai? A. Yes.

Q. What kind of schooling have you had?

(Testimony of Abraham Makekau.)

A. Went to the 10th grade.

Q. What school? A. Hilo High.

Q. What company are you employed by?

A. Hawaiian Pine.

Q. Have you been employed there for a few years now? A. Yes.

Q. Are you a member of the ILWU? [490]

A. Yes.

Q. Did you ever receive the jury questionnaire?

A. No.

Q. Not yet? A. Not yet.

Q. How long have you lived at Lanai?

A. I used to be off and on.

Q. But going back, how long have you been there? A. One year.

Mr. Crockett: Are you a registered voter of Lanai?

Witness: I used to be, but I worked in Honolulu and so I never registered over there.

Mr. Crockett: That is all.

Mr. Resner: All right, Mr. Makekau.

(Witness excused.)

ELPIDIO SIRUET

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Elpidio Siruet.

(Testimony of Elipidio Sirsuet.)

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: I live Lanai City.

Q. How long have you lived there?

A. About twelve years. [491]

Q. Where were you born?

A. Philippine Islands.

Q. Are you a citizen of the Philippine Islands?

A. Yes, sir.

Q. How old are you? A. Thirty-eight.

Q. What kind of education have you had?

(No response.)

Q. That is, how far did you go to school?

A. First grade.

Q. That is in the Philippine Islands?

A. Yes, sir.

Q. What kind of work do you do?

A. Carpenter, sir.

Q. I didn't hear that. A. Carpenter.

The Court: Carpenter.

Mr. Resner: By whom are you employed?

(No response.)

Q. Whom do you work for?

A. Lanai City.

Q. Yes, but what company employs you?

(No response.)

Q. Do you know that you work for Hawaiian Pineapple Company? A. Yes, sir. Yes, sir.

(Testimony of Elpidio Siruet.)

Q. How long have you worked there?

A. About two years. [492]

Q. Are you a member of the ILWU?

A. Yes, sir.

Q. And you are a Filipino by nationality or race?

A. Yes, sir.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. Where did you work before you went to Lanai?

Witness: What you mean?

Mr. Crockett: What?

Witness: What, sir?

The Court: You understand what he asks? He says where did you work before you went to Hawaiian Pine, Lanai?

Witness: I work in—I don't understand.

The Court: You don't understand?

(Witness shaking head.)

Mr. Resner: If Mr. Crockett wants to know, the union secretary is here and can answer the question.

The Court: We are entitled to ask him and find out whether he understands what is going on.

Mr. Crockett: I think I can ask him. What place you live before you go Lanai?

Witness: I live in Hawaii.

Q. Where? A. Hawaii.

(Testimony of Elpidio Siruet.)

Q. You work plantation? [493]

A. Yes, sir.

Q. What plantation? A. Olaa.

Q. What kind of job you have Olaa?

A. Sugar cane.

Q. You mean work outside field? A. Yes.

Q. What kind job you have in the field?

A. Cut cane man.

Q. How much pay you get one day, carpenter, when you work Lanai?

A. I got ninety cents an hour.

Mr. Crockett: That is all. No further questions.

(Witness excused.)

Mr. Resner: Mariano Baldua—oh, he is in the hospital. Mariano Baldua is in the hospital. Narcisso Sipe?

NARCISSO SIPE

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Narcisso Sipe.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Lanai City.

Q. How long have you lived there? [494]

A. Eight years.

(Testimony of Narcisso Sipe.)

Q. Where were you born?

A. Olowalu, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Filipino.

Q. Where did you go to school, if you did?

A. Kam III School. That is Lahaina.

Q. How many grades did you go to?

A. Sixth grade.

Q. How long have you been at Lanai?

A. Eight years.

Q. What kind of work do you do?

A. Crane fireman.

Q. For what company?

A. Hawaiian Pine Company.

Q. Have you had that same employment for the last eight years?

A. Four years on the crane fireman and four years on the loading pineapple on the pineapple company.

Q. How old are you? A. Thirty-one.

Q. Are you a member of the ILWU?

A. Yes.

Q. Are you a registered voter? A. Yes.

Q. Did you get the jury questionnaire?

A. No. [495]

Mr. Resner: That is all.

(Testimony of Narcisso Sipe.)

Cross-Examination

By Mr. Crockett:

Q. How much do you earn an hour as crane fireman?

Witness: 90½c.

Q. You say you are a registered voter. When did you register last? A. Last year.

Q. That is, in 1946? A. 1946.

Q. Were you registered in 1944?

A. Yes, I do.

Q. And voted at Lanai City?

A. Lanai City.

Mr. Crockett: No further questions.

Mr. Resner: That is all, Mr. Sipe.

(Witness excused.)

Mr. Resner: Antonio Mendes.

ANTONIO MENDES

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Antonio Mendes.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Mendes?

Witness: Lanai City. [496]

Q. How long have you lived there?

A. Three years.

(Testimony of Antonio Mendes.)

Q. Where were you born?

A. Lahaina, Maui—Mala Camp.

Q. And you are a citizen of the United States?

A. Yes.

Q. How much schooling have you had?

A. Fourth grade.

Q. What school?

A. Sacred Hearts School, Lahaina.

Q. What kind of work do you do?

A. Mason.

Q. For what company?

A. Hawaiian Pine.

Q. How long have you had that job?

A. About a year now.

Q. About a year? A. About a year.

Q. What is your race?

A. Spanish-Peruvian.

Q. You are caucasian? A. Yes.

Q. Are you a registered voter?

A. Yes, sir.

Q. Did you receive the jury questionnaire?

A. No.

Q. Did you register in Lanai in 1944?

A. No, I registered in Lahaina, 1944. [497]

Q. You registered in Lahaina in 1944?

A. Yes.

Q. That is on Maui? A. Yes.

Q. And in 1946 you registered—

A. In Lanai.

(Testimony of Antonio Mendes.)

Q. Well, did you receive the questionnaire at Lahaina? A. No.

Q. And not at Lanai either? A. No.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. You know what they are referring to by the questionnaire?

Witness: I guess that is on this jury. That is what you mean.

Q. You never received one?

A. I never did receive one.

Q. Counsel didn't show you a copy of what we refer to as a questionnaire?

A. Well, I didn't see a questionnaire yet.

Mr. Crockett: That is all.

Examination by the Court

The Court: I would like to ask one question in connection with that. You say you registered as a voter in Lahaina in the 1944 elections.

Witness: Yes. [498]

The Court: Were you living in Lahaina then?

Witness: Yes, I living Lahaina that time.

The Court: When did you change your residence to Lanai?

Witness: 1945.

The Court: 1945. That is all.

(Witness excused.)

Mr. Resner: Mr. Tom Yagi.

THOMAS SEIKICHI YAGI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Thomas Seikichi Yagi.

Direct Examination

By Mr. Resner:

Q. How do you spell your last name?

Witness: Yagi.

Q. Where do you live? A. Waiehu, Maui.

Q. What is your job. What kind of work do you do? A. Secretary-treasurer.

Q. For the ILWU? A. That's right.

Q. Which local, Mr. Yagi? A. Local 144.

Q. Maui? A. That's right. [499]

Q. What does the membership of that local union include?

A. According to our latest record, it is 5,388.

Q. It is what? A. 5,388.

Q. 5,388. And what territory does that include?

A. Include just Maui.

Q. And what kind of workers does it include?

A. Sugar, pineapple, miscellaneous, longshore.

Q. How long have you been the secretary of the local union?

A. This November will be two years.

Q. How many of those members are citizens?

A. About 40% of the membership.

Q. About 40% of the membership?

A. Yes—would be about 2,150.

(Testimony of Thomas Seikichi Yagi.)

Q. How do you arrive at that figure?

A. 60% is non-citizen, according to our latest record.

Q. And what is the nationality or race of those who are not citizens? A. Majority is Filipino.

Q. The majority is Filipino? A. Yes.

Q. And are the rest of the membership mainly native-born? A. Native-born.

Mr. Resner: Yes. That is all. [500]

Cross-Examination

By Mr. Crockett:

Q. Counsel asked you a question, Mr. Yagi, and you didn't answer. Would you mind answering the question? How did you arrive at the figure—that 40%?

Mr. Resner: I think he did answer it. He said 60% were aliens and the balance, citizens.

Mr. Crockett: How did you arrive at the figure of 40% being citizens?

Witness: When we arrived at the figure of 40% being citizens, that means by our record, union record. We have every record of our membership—a book—we have a record whether they are citizens, non-citizens.

Q. Your record definitely shows that he is and is not a citizen? A. We have that record.

Q. Have you got—what kind of record is that? Have you got a copy of the record so that we can see it—see how you keep the record?

A. Not here at present.

(Testimony of Thomas Seikiehi Yagi.)

Mr. Crockett: If the Court please, may I ask the witness be instructed to bring us a sample of the registration card so that we can see just what the record is.

The Court: We will take a ten minute recess and maybe you can——

(Second Circuit Court recessed at 9:48 a.m., reconvened at 10:06 a.m.)

Mr. Crockett: If the Court please, the witness has produced the cards. We will not offer this in evidence, but just to exhibit it to the Court.

Mr. Resner: That is satisfactory.

The Court: Is there any objection to their being exhibited?

Mr. Resner: No, I want it to be exhibited. I want the Court to see the way it is kept.

The Court: Let the record show there has been exhibited as a sample a card that is filled out with a printed word, "Nationality," and the typewritten insertion, "Hawaiian-Chinese" on this particular card. "Birthdate" is printed and then in typewriting is inserted a date for this particular card. "Place," printed; typewritten into the place, "Kahului, Maui" for this particular card. Then on the second line, abbreviated, in printing, "Citizen"; and in typewriting is inserted, "United States." That is the extent of this particular thing of importance?

Mr. Resner: Yes, your Honor.

(Testimony of Thomas Seikichi Yagi.)

The Court: Let the record show that the card is returned to the witness.

Mr. Resner: Yes, it has been exhibited to Mr. Crockett, along with a few other samples—six or eight of them, I think. [502]

Mr. Crockett: Mr. Yagi, in other words at the union headquarters, you keep a card for each individual member—similar to the one you have shown to the Court?

Witness: Yes.

Q. Where did you get the information entered in this card?

A. We have quarterly or yearly tabulation. That means we are going out and have these members sign their name, their address, their citizenship, nationality and place of birth—a form of questionnaire that is constantly—has been for the record.

Q. Have you gone through these cards and made an actual count of the citizens and of the aliens, or is the figure, 40%, just an estimate?

A. The 40% is an estimate. It is not a correct—it is not an exact figure. It is an estimate.

Q. Just an estimate? A. Yes.

Q. How did you arrive at that figure, 40%, as an estimate?

A. Comes to that, I cannot answer that because we took that as an estimate of the counts and it is not an exact number—40%. It is close to 40%.

Q. But you can't tell us how you chose 40%?

A. By tabulating this so-called card.

(Testimony of Thomas Seikichi Yagi.)

Q. You stated just now that you didn't make an actual count of the citizens and aliens. [503]

A. We did make a count of actual—but we cannot give the exact number of percentage.

The Court: Might I ask a question with the consent of Counsel? Are you speaking in your percentage as of the way the record shows today, or are you speaking of it as shown between July and December of last year?

Witness: Between January and this month.

The Court: I see. Is there any way from these cards or from any other method that you have—any facts as to how many of the possible United States citizens actually have registered as voters?

Witness: Yes, we have through the records of the Territorial Government—registered voters.

The Court: Have you any information to give from that—first, I might ask—have you made the comparison yourselves?

Witness: Yes, we did.

Mr. Resner: They did make it for some of them—I don't think complete. It was checked by the list against the registered voters.

The Court: I don't want to go into detail, Mr. Resner. I simply want to get, if he has it in mind, a comparison as to what the percentage of those available as United States citizens under the list of last year were actually registered voters last year. Can you give us any—

Mr. Resner: I might exhibit to the Court and

(Testimony of Thomas Seikichi Yagi.)

show Counsel the way in which it is done. It is not done completely by the register or roster of ILWU members compared with the Register of Voters as is indicated in that sheet which shows those are the ILWU who have registered as voters.

The Court: But it really doesn't give me what I am trying to get—some information about his percentage of United States citizens as against the percentage of those who had the citizenship possibility, how many out of that percentage were in fact registered voters last year.

Mr. Resner: I understand your question.

The Court: If he has any estimate or fact on that. If he hasn't, all right. I thought that while he was here I might get that information.

Mr. Resner: Can you answer that question, Mr. Yagi?

Witness: No, I couldn't.

Mr. Crockett: And when you give a figure of 40%, you haven't tried to segregate as to the ages of the persons? A. Not the ages.

Q. In other words, just——?

A. Just general.

Q. The lump sum of approximately 40% which you estimate to be citizens. A. Yes.

Mr. Crockett: That is all. [505]

Redirect Examination

By Mr. Resner:

Q. Mr. Yagi, did you estimate on the basis of the 60% that those were Filipinos and the others who had not had not acquired citizenship.

(Testimony of Thomas Seikichi Yagi.)

Witness: I don't get you.

Q. You say that 40% of the membership you estimate are citizens and 60% are not citizens.

A. Yes.

Q. What I am getting at is this—does the 60% include the Filipinos who are not citizens?

A. That's right.

Q. That is, most of the 60% is Filipino.

A. Filipino.

Q. I neglected to ask you this—how many members have you at Molokai?

A. On Molokai, according to the last record, we have 700. That is Local 152.

Q. That covers the Island of Molokai?

A. That covers the Island of Molokai.

Q. What kind of industry?

A. Pineapple.

Q. Now, what is the estimate of citizens at Molokai?

Mr. Crockett: Might I ask Counsel if he is referring to citizens who are members of the union or——?

Mr. Resner: No, citizens who are members of the union. [506]

Witness: That I would take—again is based upon 40% is citizens.

Mr. Resner: Is that based upon the division according to nationality?

A. Division according to the registered voters.

Q. What I am getting at—are those who are not citizens mainly Filipino?

(Testimony of Thomas Seikichi Yagi.)

A. That's right. Again it is mainly Filipino who are not citizens.

Mr. Resner: That is all.

Mr. Crockett: That is all.

Mr. Resner: I would like to excuse this witness. you don't want him any more, Mr. Crockett?

Mr. Crockett: No.

Mr. Resner: All right, Mr. Yagi. That is all.

(Witness excused.)

PEDRO DELA CRUZ

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Pedro Dela Cruz.

Direct Examination

By Mr. Resner:

Q. Your name is Pedro Dela Cruz?

Witness: Yes, sir.

Q. Where do you live? A. Lanai City.

Q. What local is that?

A. Beg your pardon?

Q. What is the number of the local?

A. Local 152—Unit 7.

Q. What kind of workers are included?

A. Pineapple workers.

Q. How many members have you?

(Testimony of Pedro Dela Cruz.)

A. We get—the last time we had, we had 800 dues paying members now.

Q. How many of them are citizens, Mr. Dela Cruz?

A. To the best of my knowledge—this is only a guess now—I think we get 300 citizens—that is Japanese, Hawaiians—citizens.

Q. Yes.

A. And about 500, that is mostly Filipino, non citizens.

Q. The non citizens are mainly Filipino, is that right? A. Yes.

Q. Was the ILWU in your particular union engaged in a strike in the pineapple industry from July 10th to July 15th of last year?

A. Yes, sir.

Q. Do you know the defendants in this case—these men sitting in the court room?

A. Yes, sir.

Q. Are they members of the local union of which you are the officer? A. Yes.

Q. Were they arrested at the time of the strike?

A. Yes.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. You say about 300 citizens on Lanai who are members of the ILWU?

Witness: Yes, sir.

(Testimony of Pedro Dela Cruz.)

Q. Of those 300 citizens, how many you think are registered as voters?

A. Oh, this is only a guess—I think most of the workers are over 21 years old; so I guess almost 300. I don't know if they are registered, but they are qualified voters, I think.

Q. I am asking you how many you think are registered voters. I am not interested in qualified voters.

A. I don't know.

Q. And these 300 members that you refer to—are they all male, or do they include women?

A. No, maybe we get about between thirty and forty women.

Q. Are they all—the thirty and forty women, are they all citizens?

A. Yes, sir.

Q. All citizens?

A. Yes.

Q. So, then, out of your 300 citizens, you mean then you would have to deduct about 30 to 40 who are women and you would have approximately 270 citizens? Upon [509] what did you base your estimate that you have approximately 270 male citizens as members of the union?

A. I no can tell that, but to the best of my knowledge, I think—that is my guess.

Q. Have you any idea what the total registered vote of male persons in Lanai City is?

A. Male? That is only union members?

Q. No, I am talking about the total registered vote of Lanai City of male persons.

A. What I heard—that electors last year was

(Testimony of Pedro Dela Cruz.)

only about 250. That is only what I heard around.

Registered voters in Lanai, male, about 250.

Q. 250 males registered? A. Yes.

Q. And yet you say your union has 370.

The Court: 270.

Mr. Crockett: 270.

Witness: Qualified voters. I don't know if they were registered—if they were all registered or not.

Q. And your estimate—over what period does that cover? Are you talking now about 1946?

A. That last count we had is that before we send in our new check-off to the company; that is the new check-off that we sent. But in our last roster, we had 1300 members before the last—old contract is expired. But when the old contract expired, we have only 800 dues paying members. [510]

Q. Well, when you say the last check-off, what period do you mean?

A. This was between July 20th and August 20th of this year.

Q. Of this year, 1947. Now, do you have any idea of what the membership of your union was during 1946, between July and December of 1946?

A. That is what I said. We get about 1300 members.

Q. You just stated that that was the number you determined at the last check-off which was in this year, 1947.

Mr. Resner: No, if your Honor please, I think Mr. Crockett was mistaken.

(Testimony of Pedro Dela Cruz.)

The Court: He said it dropped in the last check-off from 1300 to 800.

Mr. Crockett: Pardon me. Have you any idea what your union membership consisted of in 1944?

Witness: We didn't get no union at that time.

Q. Oh, you didn't have a union at that time.

A. In Lanai.

Q. And of your 1300 that you say you had in 1946, what portion of those were citizens or what number of those were citizens?

A. Oh, we get about the same because these citizens—they are not dropping off from our union members. It is mostly the Filipinos going out, coming back.

Mr. Crockett: If the Court please, I would like to ask for a few minutes' recess. When Counsel was questioning this witness—the last question he asked [511] I didn't get. I would like to read over the record again just—.

The Court: We will take a five minute recess.

(The Second Circuit Court recessed at 10:24 and reconvened at 10:29 a.m.)

Mr. Crockett: We have no further questions of this witness, if the Court please.

Mr. Resner: All right, Mr. Dela Cruz.

(Witness excused.)

Mr. Resner: We have one more witness before we rest, your Honor. We have the exhibit that we have not yet copies, identified—that of the voters

in the Honolulu District—their names as against their occupations, and the person who made that compilation will be here in a few minutes. So in order to save the Court's time, I might suggest that Mr. Crockett put on his two witnesses.

The Court: Are you ready to proceed, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

EDWARD MAU HIN ALU

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Edward Mau Hin Alu.

Mr. Crockett: What do you live, Mr. Alu? [512]

Witness: At present at Kuau.

Q. And where are you employed?

A. At Hawaiian Commercial and Sugar Company.

Q. Did you formerly live in Puunene?

A. Yes.

Q. And you are working in Puunene?

A. Yes.

Q. What is your particular occupation?

A. Beg your pardon?

Q. What is your particular job or occupation?

A. Machinist.

(Testimony of Edward Mau Hin Alu.)

Q. Where? Which portion of the plantation?

A. At H. C. & S.

Q. At the mill?

A. At the machine shop.

Q. At the machine shop. And were you previously living in Puunene? A. Yes.

Q. How long have you been living at Kuau?

A. About three weeks now.

Q. Are you a member of the union, Mr. Alu?

A. I am.

Q. What union? A. Local No. 4.

Q. Of the ILWU? A. ILWU.

Q. Are you the same Alu who is mentioned on the Grand Jury list, which was published I think about December, as one of the grand jurors for this circuit? [513]

A. Last December, did you say?

Q. Did you see the list published in the Maui News? A. No, I haven't.

Q. Do you know of any Alu having the same name as yours?

A. Got two other brothers.

Q. Do they have the same first name?

A. No. One is Harry and the other is Alfred.

Q. And you are the only Mau Hin Edward Alu?

A. Yes.

Q. You know of no other in the County of Maui but yourself? A. No.

Q. You haven't been actually called to serve as a grand juror at all at any time?

(Testimony of Edward Mau Hin Alu.)

A. I served in the 1927 or 1928 session.

Q. What that grand jury or trial jury?

A. That is trial.

Mr. Crockett: That is all.

Mr. Resner: No questions.

Witness: You need my services any more?

Mr. Crockett: If the Court please, we have no further need for Mr. Alu and ask that he be excused. ?

Mr. Resner: I don't desire him further.

The Court: You may be excused, Mr. Alu.

(Witness excused.)

Mr. Crockett: Mr. Muroki? [514]

EDWIN KIYOSHI MUROKI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name?

Witness: Edwin Kiyoshi Muroki.

Direct Examination

By Mr. Crockett:

Q. Where do you live, Mr. Muroki?

Witness: Haiku, Maui.

Q. Where are you employed?

A. Libby, McNeill & Libby, Pauwela.

Q. Where are you registered as a voter?

A. At Libby, Haiku.

(Testimony of Edwin Kiyoshi Muroki.)

Q. That is the 19th precinct?

A. That's right, sir.

Q. What is your particular occupation?

A. I am store keeper at Libby, McNeill & Libby, Pauwela.

Q. Are you a member of the union?

A. Yes, sir.

Q. Which union?

A. I really don't know the number of our union.

Q. Is it one of the locals of the ILWU?

A. That's right.

Q. How long have you been employed at Libby, McNeill & Libby?

A. For the last twelve years. [515]

Q. Did you see your name published in the paper as one of the jurors on the list selected by the Jury Commission to serve as grand jurors?

A. No, I didn't sir.

Q. You know of any other person in the Haiku precinct by the name of Edwin K. Muroki?

A. In fact, there is no one in the Territory that has my name.

Q. So that if your name appears on a list, it refers to you, then?

A. That's right.

Cross-Examination

By Mr. Resner:

Q. You are not a member of the Grand Jury?

Witness: No, I never have been.

The Court: What nationality are you?

(Testimony of Edwin Kiyoshi Muroki.)

Witness: I am Japanese.

Mr. Resner: I think you will stipulate too, Mr. Crockett, that Mr. Alu is not a member of the Grand Jury?

Mr. Crockett: He so testified.

(Witness excused.)

FRANCIS B. DE MELLO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name. [516]

Witness: Francis B. DeMello.

Direct Examination

By Mr. Crockett:

Q. What is your occupation, Mr. De Mello?

Witness: Lieutenant in charge of identification
—Maui Police Department.

Q. Do you know Mr. Andrew S. Freitas?

A. I do.

Q. Is Mr. Freitas connected with the Police Department?

A. He is the Assistant Chief of Police.

Q. That is, for the County of Maui?

A. For the County of Maui.

Q. Where is Mr. Freitas at the present time?

A. Mr. Freitas is on a vacation on the Mainland.

(Testimony of Francis B. De Mello.)

Q. Were you at Lanai on the 14th day of July of this year? A. I was.

Q. And was Mr. Freitas there at the same time?

A. He was present on the Island at the time.

Q. Do you recall whether or not you were down at Kamalapau on the afternoon of that day?

A. The 14th?

Q. The 14th. A. We were.

Q. Were you present when there was an incident that arose at Kamalapau that afternoon? [517]

A. I was.

Q. Were there other police officers present too?

A. I think there were five or six other officers—Assistant Chief Freitas—.

Q. You needn't give the names. Did the police arrive before the incident or after the incident had started?

A. We got there before the incident.

Q. And as a result of that incident, was a complaint—that is, a complaint filed in court?

A. There was a complaint in court.

Q. Charging certain persons——?

A. For being unlawfully assembled.

Q. Was that complaint made as a result of a complaint by any outside persons, or was that a complaint that was based upon the police being present and eye witnesses of the incident?

Mr. Resner: If your Honor please, I don't see the relevancy of this and I object on that ground.

Mr. Crockett: Might I explain to the Court the

(Testimony of Francis B. De Mello.)

relevancy I have. If the Court please, Counsel for the Defendants is laying considerable stress upon the fact that this incident occurred at Lanai; that these persons are employed by the Hawaiian Pine; that there was a strike there—which raises the inference that the Hawaiian Pineapple Company were the complainants in this particular case. At this time by this question, I propose to prove to the Court and have the record [518] show that this complaint was instigated by the police, based upon their eye witness observation of what they considered was a violation of the laws of the Territory of Hawaii—not the result of any complaint that was made by any person, individual, corporation or any other—that is the sole purpose of this question.

Mr. Resner: I still think it irrelevant. I submit the objection.

The Court: The objection is overruled. Will you read the question, Miss Reporter?

Reporter: (reading) “Was that complaint made as a result of a complaint by any outside persons, or was that a complaint that was made based upon the police being present and eye witnesses of the incident?”

Witness: The complaint was made upon the facts that the police observed at Kamalapau at the time. No one made any complaint other than what the police observed, and from that they formulated their complaint.

Mr. Crockett: You may cross-examine.

(Testimony of Francis B. De Mello.)

Cross-Examination

By Mr. Resner:

Mr. Resner: Was this incident something that grew out of the pineapple strike?

Witness: Yes, sir.

Q. There was a strike on at that particular time?

A. There was. [519]

Q. How did you happen to be over there?

A. On Lanai?

Q. Yes.

A. Well, there was some disturbance on Saturday morning—this incident happened on Monday—and Assistant Chief Freitas had arrived there and had sent for me to go over.

Q. Were you supposed to remain there during the course of the strike? Was that it?

A. When I got over there, I was supposed to stay over there as long as I was told to remain there.

Q. As long as the strike continued?

A. Yes, sir.

Q. But you were not regularly stationed at Lanai? A. No, sir.

Q. Your work is here on Maui?

A. My work takes me on all the Islands of the County of Maui—that is, Molokai, Lanai and on this Island—and I go from one district to the other on this Island—Lahaina, Hana and in Makawao, Paia.

Q. But this is your office here—this is your main place of activity—Maui? A. Yes.

(Testimony of Francis B. De Mello.)

Mr. Resner: That is all.

Examination by the Court

The Court: I would like to ask a question in this connection. Were you taking orders from anybody but the Chief of Police? [520]

Witness: That is all we were taking orders from—the Assistant Chief of Police Freitas, who was present at the time on the Island of Lanai.

The Court: Directly or indirectly were any of your orders coming from the so-called “big five”?

Witness: No, sir.

Mr. Resner: If the Court please, I object to the Court’s question upon the grounds I believe it is irrelevant in view of your Honor’s ruling on the character of the “big five.”

The Court: Any direct interference with the duties of public officials—that is material. I have never barred you from that.

Mr. Resner: I understood your Honor’s ruling at the outset when we were trying to show what we conceived to be the economic and social composition of the Territory and offered proof in that regard, your Honor did not allow it.

The Court: You are quite correct—on the general question of the economic place of these people. But on the question of the direct incidents under investigation, I have never barred you or anyone else from showing that anyone has threatened to influence the action of public officials—jurymen or the police.

(Testimony of Francis B. De Mello.)

Mr. Resner: The record will show my exception to the Court's questions.

The Court: The exception is in the record.

Mr. Crockett: We have no further questions of Mr. De Mello.

(Witness excused.) [521]

EUGENE BAL

having been previously sworn, was recalled to the stand and testified as follows:

Direct Examination

By Mr. Crockett:

Q. If the Court please, Mr. Bal has been previously sworn and I ask that he be instructed he is still under oath.

The Court: That is true.

Mr. Crockett: Mr. Bal, have you a list showing the registered voters of the County of Maui that was compiled after the 1944 election, showing the racial composition of the voters?

Witness: I have such a list.

Q. And was that list compiled in the same way as you have previously testified was done with regard to the 1946 list? A. Yes, sir.

Q. May I have that?

(Witness handing to Counsel for the Prosecution.)

(Testimony of Eugene Bal.)

Q. You have two sheets here. The first sheet refers to the males? A. That is correct.

Q. And the second sheet—what does that refer to? A. Females.

Mr. Crockett: If the Court please, we offer in evidence the lists showing the registered voters for [522] the general election of November 7th, 1944, of male persons for the County of Maui.

The Court: The sheet regarding the male voters will be put in evidence.

Mr. Crockett: You wish to offer the other?

Mr. Resner: I think you might offer them both.

Mr. Crockett: I don't want to offer the other. I will just detach this male sheet.

Mr. Bal, do you also have a list for 1944 showing the vote cast which will show the total voters and the vote cast for the 1944 election?

Witness: That is correct.

Q. And this list which you have is the true list?

A. That is the list prepared in my office for the election of 1944.

Q. And in the same manner as the previous lists were prepared? A. Yes, sir.

The Court: The list of male voters that you have identified as segregated by nationality for 1944 may take the Prosecution's Exhibit "A."

Clerk: I have so marked it Prosecution's Exhibit "A."

Mr. Crockett: The second list, if the Court please, we ask that that be marked Exhibit "B."

(Testimony of Eugene Bal.)

The Court: Any objection to the second list?

Mr. Resner: No.

The Court: It may be marked Prosecution's Exhibit "B"—just the first sheet? [523]

Mr. Crockett: Just the first sheet which we offer in evidence—we ask that this sheet be received in evidence as Prosecution's Exhibit "B."

The Court: So ordered.

Mr. Crockett: That is all, Mr. Bal.

Mr. Resner: I have no questions, your Honor, except that I think the second page should also be in evidence in view of our view of the case.

The Court: That may be marked for identification. The Court's previous ruling—no materiality.

Mr. Resner: They may take the next numbers in order as Defendant's exhibits for identification, and we take an exception to the Court's ruling on the refusal to receive it in evidence.

The Court: Exception noted.

Mr. Resner: What numbers will that be, Mr. Clerk?

Deputy Clerk: Movants' Exhibits 20 and 21.

Mr. Resner: No. 19 will be the photostatic copies of the affidavits of questionnaires—that is, the questionnaires. If your Honor please, we might advise the Court that with regard to various questionnaires that we used—they are being photostated and certified and will be filed as an exhibit when that work is completed. It may take a day or so more.

The Court: The Court can use for the time being

(Testimony of Eugene Bal.)

and Counsel can use the original files that are here.

Mr. Resner: That is correct. These become 20 and 21, do they? [524]

Deputy Clerk: 20 and 21.

(Witness excused.)

Mr. Crockett: May I ask Mr. D. W. Tallant to take the stand, please?

DAVID W. TALLANT

having been first duly sworn, by the Court, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. Will you give us your full name?

Witness: David W. Tallant.

Q. Are you the Deputy Clerk of this court?

A. I am.

Q. Were you acting as such Deputy Clerk last year in December? A. I was.

Q. Mr. Tallant, showing you what has been offered in evidence as Court's Exhibit 2, the minutes of this court for Friday, December 27th, 1946, showing the Honorable Cable A. Wirtz, Judge Presiding, and D. W. Tallant as Deputy Clerk. Are you the clerk that is mentioned in these minutes?

A. I am. I am the clerk mentioned in here.

Q. The minutes show that you at that time drew

(Testimony of David W. Tallant.)

names from the jury box for the Grand Jury panel.

Is that correct? A. That is correct. [525]

Q. Where is the jury box?

A. It is in the vault in the Clerk's Office.

Q. Would you produce the jury box from which you made the drawing at that time?

The Court: We will take a little five-minute recess while you get this.

(Second Circuit Court recessed at 10:50 a.m. and reconvened at 10:58 a.m.)

Mr. Crockett: Mr. Tallant, do you have now the box or boxes which are used in connection with the drawing of the jury?

Witness: I do have the box.

Q. Will you please exhibit them—that is, which boxes do you have?

A. (Indicating): This box here that I now hold in my hand contains—is the box that contains the names of the 50 jurors that were selected by the Jury Commission.

The Court: For which——?

Witness: For the year 1947.

The Court: Grand jury or trial jury?

Witness: Grand jury.

Mr. Crockett: How do you put the names in that box?

Witness: The names are selected from the list made up by the Jury Commissioners.

Q. Do you put the entire list? [526]

A. The entire Grand Jury list.

(Testimony of David W. Tallant.)

Q. You put the entire Grand Jury list?

A. Yes. They are cut up into slips.

Q. And at the time of the drawing of the Grand Jury in December, 1946, were the names of all the persons on the Grand Jury lists placed in this box?

A. They were placed in this box.

Q. And you say they were cut into individual slips?

A. That is correct.

Q. After they are placed in this box, what is next done by you or the Clerk's Office?

A. Upon the return day—after the notice is given to the paper of the drawing of the Grand Jury—when court convenes on that day, upon the instructions of the Court, the Clerk—after first shaking up this jury box—draws the names of 23 grand jurors.

Q. After the names are put in the box, is the box locked or is something done to it in that way?

A. The box is locked.

Q. And who keeps the key?

A. The Chief Clerk of the Court retains the key.

Q. Then after you have shaken the box, you make the drawing, you say?

A. That is correct.

Q. And when you make that drawing, will you explain to the Court what is your practice or how you usually do it?

A. Upon instructions of the Court, after first shaking [527] up the grand jury box containing the

(Testimony of David W. Tallant.)

50 names, one name at a time is drawn until the names of 23 grand jurors are drawn.

Q. And is that the way you did it in 1946?

A. That is the way it was done in 1946.

Q. And at the time when you draw those names, do you have any way of knowing what name you are going to draw?

A. I have no way of knowing.

Q. Do you look into the box at all to see what name you are drawing?

A. I do not. My hand is placed into the box with the cover leaning on my wrist.

Q. In other words, the cover is open only far enough to admit your hand?

A. That is correct.

Q. So that the first information you have as to the name drawn is after you have taken it out of the box?

A. One name at a time, yes.

Q. One name at a time. When you take the name out, what is done then?

A. That name is written down and placed in another box.

Q. By whom is it written?

A. Written by myself as clerk, and the reporter.

Q. And that is in the presence of the Court?

A. That is correct.

Q. And in the presence of other persons who might be present in the court? [528]

A. That is correct.

Q. After the name is taken out and recorded, then what is done?

(Testimony of David W. Tallant.)

A. It is placed in a separate box.

Q. You have that separate box?

A. I do have the box here with me.

Q. Will you exhibit that to the Court?

A. This is the box in which the 23 names were placed.

(Witness exhibiting box.)

Q. How many compartments does that box contain?

A. How many compartments? Two compartments.

Q. Why two compartments?

A. In one of the compartments, the names of the grand jurors are placed and in the other compartment the names of the trial jurors are placed.

Q. And what is done with that box—at least, after the name is placed in that compartment for the Grand Jury, what is done then?

A. It is then returned and placed in the vault in the Clerk's Office.

Q. After the names have been drawn, is the box kept—do the names remain in there, or taken out afterwards?

A. The names remain in here so long as they are not excused by the Court for the term.

Q. Will you open—is that box locked or unlocked? A. This box is not locked.

Q. Will you open the part for the grand jurors and exhibit it to the Court and Counsel for their inspection? [529]

(Testimony of David W. Tallant.)

A. This is the box.

Q. Does that contain any names in there at the present time?

A. This compartment contains some names.

The Court: The Court will inspect it.

(Witness handing to the Court.)

The Court: The compartment that has been shown me here is a felt lined 4 x 6—and in it are folded slips; that is, slips that have a crease in them. Is that crease there at the time they were originally in the box from which they were first drawn?

Witness: They were.

The Court: Or is this crease added there after drawn?

Witness: No, they are made at the time it is placed in the other box.

The Court: That is to say, this slip that I now pull from this box that we are inspecting is typical of the type of slips that are used for originally putting the names on?

Witness: That is correct.

The Court: And at the present time the crease shows it is folded so that the typewritten name on it is on the inside. Is that the way those names are placed in the box—folded so that the names are in the inside?

Witness: That is correct? [530]

The Court: And when you open it out, the name on this particular slip I am using for a sample—there is a number on it, 38. And then a name, An-

(Testimony of David W. Tallant.)

thony A. Tam. Is that typical of the way the slips are produced individually?

Witness: That is correct.

The Court: And the slip is about half an inch by four inches long—typewritten paper.

Witness: About that.

The Court: So, as I understand it, when the names of the 50 are originally in the box before any drawing, they are on slips of this type—folded, with the name inside, and are loose in the box subject to being changed about by shaking and by twisting the hand?

Witness: That is correct.

The Court: Are any of the names tabbed together by glue, rubber band or any other means to keep them together in a group?

Witness: No, the names are not glued in any way.

The Court: They are all separate?

Witness: They are all separate.

Mr. Crockett: At this time, if the Court please, does the Court care to have the Clerk check over those names and read them off to ascertain what the names are in the box at the present time?

The Court: I don't care about it. If Counsel does—— [531]

Mr. Resner: I think it is irrelevant.

Mr. Crockett: Okey. Now, Mr. Tallant, referring back to the first box which you identified—an old—ancient koa box, termite-eaten, approximately

(Testimony of David W. Tallant.

8 x 10 x 6, I would say—which you say is locked. Is this box kept locked all the time?

Witness: That particular box is always kept locked.

Q. And does this contain anything?

A. Contains the names of the difference between 50 and 23—that is, 27.

Q. In other words, names of the persons who have not yet been drawn for the Grand Jury?

A. That is correct.

Q. Have you the key to this?

A. I have the key here.

Q. Would you open this box and exhibit the contents to the Court?

(Witness unlocking box and exhibiting to the Court.)

The Court: Let the record show that the witness in the presence of the Court and Counsel has opened the box indicated, and in it are slips of paper, folded, with the blank side out and the printed side inside. If Counsel wants to check over the names of the remaining 27 in there, you are at liberty to do so.

Mr. Resner: I don't think it is necessary. I do see by random that the first name I pick is Mr. Muroki, who is here.

Mr. Crockett: No purpose to having that in the record. In fact, if the Court please, I would like to have the Clerk read off the names which are remaining in the box, if the Court will permit that, to show particularly that person who have been

(Testimony of David V. Tallant.)

selected on the panel—hat their names are still in the jury box for further selection.

The Court: In the course of this, Mr. Tallant, you can take them on by one from the box and put the slips temporarily here (indicating) before they are returned to the box. Let the record show the process is being done openly.

Witness (Drawing from box): List No. 8, Yong Kam Chew. List No. 10, Edwin K. Muroki. List No. 18, Eugene K. Ays. List No. 5, Roy Tatsumi Ito. List No. 36, Edmund Nunes. List No. 23, Manuel De Ponte. List No. 47, Stanley C. Friel. List No. 12, Louis Sequeira. List No. 26, Mau Hin Edward Alu. List No. 4, Manuel Correia, Jr. List No. 17, Ernest Rezens. List No. 9, Ray M. Allen. List No. 2, Toshio Onuma. List No. 42, Albert G. Simpson. List No. 34, H. W. English. List No. 48, Charles E. Morris. List No. 3, Gottlieb Z. Coleman. List No. 19, Paul A. Hayood. List No. 1, David P. Eldredge. List No. 3, Manuel Feiteira. List No. 28, James M. Fleming. List No. 24, Frank W. Broadbent. List No. 30, Albert D. Waterhouse. List No. 21, [533] Gunn H. Fredholm. List No. 14, Shosaku Nakamoto. List No. 32, Andrew Moodie. And List No. 20, Charles H. Saka.

Mr. Crockett: That is all?

Witness: That is all.

The Court: Let the record show that the slips that he has taken on are of the same character before described—with one fold in the center, folding the name on the inside of the slip and no other indications of other creases or marks.

(Testimony of David W. Tallant.)

8 x 10 x 6, I would say—which you say is locked. Is this box kept locked all the time?

Witness: That particular box is always kept locked.

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A. Contains the names of the difference between 50 and 23—that is, 27.

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(Testimony of David W. Tallant.)

selected on the panel—that their names are still in the jury box for further selection.

The Court: In the course of this, Mr. Tallant, you can take them one by one from the box and put the slips temporarily here (indicating) before they are returned to the box. Let the record show the process is being done openly.

Witness (Drawing from box): List No. 8, Yong Kam Chew. List No. 40, Edwin K. Muroki. List No. 18, Eugene K. Ayers. List No. 5, Roy Tatsumi Ito. List No. 36, Edmund Nunes. List No. 23, Manuel De Ponte. List No. 47, Stanley C. Friel. List No. 12, Louis Sequeira. List No. 26, Mau Hin Edward Alu. List No. 4, Manuel Correia, Jr. List No. 17, Ernest Rezents. List No. 9, Ray M. Allen. List No. 2, Toshio Onuma. List No. 42, Albert G. Simpson. List No. 34, H. W. English. List No. 48, Charles E. Morris. List No. 35, Gottlieb Z. Coleman. List No. 19, Paul A. Haygood. List No. 1, David P. Eldredge. List No. 31, Manuel Feiteira. List No. 28, James M. Fleming. List No. 24, Frank W. Broadbent. List No. 30, Albert D. Waterhouse. List No. 21, [533] Glenn H. Fredholm. List No. 14, Shosaku Nakamoto. List No. 32, Andrew Moodie. And List No. 20, Charles H. Saka.

Mr. Crockett: That is all?

Witness: That is all.

The Court: Let the record show that the slips that he has taken out are of the same character before described—with one fold in the center, folding the name on the inside of the slip and no other indications of other creases or marks.

(Testimony of David W. Tallant.)

Mr. Crockett: Now, Mr. Tallant, for the benefit of any further proceedings that might take place in any other case, will you, in the presence of the Court, return those slips to this Grand Jury box and again lock it?

(Witness returns slips and locks box.)

Mr. Crockett: May the record also show that all the slips which were taken from the Grand Jury box have been returned and locked by the Clerk. As I say, that is for the benefit of any other proceedings that might come about.

The Court: The record may so show.

Mr. Crockett: Just one question I overlooked. When you make the drawing in the court as you have previously testified, do you call out the names as you draw them, just as you did at the present time?

Witness: The names I call out as the slips are taken out of the box. [534]

Q. So that all persons in court can hear the names as they are drawn?

A. That is correct.

Q. How many years have you been Deputy Clerk of this court? A. Twenty-two years.

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Mr. Tallant, there are 21 members on the Grand Jury now. Is that right?

(Testimony of David W. Tallant.)

Witness: I haven't checked the list. I believe about 21 now.

Q. Do I understand you drew 23?

A. I drew 23.

Q. What happened to the other two?

A. The—I have my records in the office. I don't know offhand just what happened.

Mr. Resner: I think that in order to make the record complete we should find out what happened to the two who are not serving, if your Honor please. I should like that information in the record.

The Court: That is perfectly proper. Can you get your minutes?

Mr. Crockett: If the Court please, I think that was brought out by Judge Wirtz yesterday. One, Mac Ajifu, was excused by the Court on account of his mental condition and the other one was Mr. Percy, who was [535] excused by the Court—claimed exemption—over 60.

The Court: You want a further check?

Mr. Resner: No, if that is the record. One on account of mental disability and the other claimed his age exemption.

The Court: That is my memory of Judge Wirtz's testimony.

Mr. Resner: Yes, that is my understanding. I want the record to be clear on that. That is all, Mr. Tallant.

The Court: Any further questions of Mr. Tallant?

Mr. Resner: No.

(Testimony of David W. Tallant.)

The Court: Mr. Crockett, any further questions?

Mr. Crockett: I have no further questions of this witness.

The Court: Mr. Bailiff, will you get the Chief Clerk and let him take charge of these so that they can be returned?

(Witness excused.)

Mr. Crockett: If the Court please, we have just one more bit of evidence. Counsel will stipulate that a tabulation which I asked be prepared is a summary of the questionnaires which Judge Wirtz testified were sent out to various persons within the County of Maui. The summary, as I pointed out when Counsel had the list of the 1st Precinct, has a fly sheet on it showing the names that the Court, or, the Commissioners have considered as qualified jurors; [536] those they have listed as questionable; those they have listed as exempted; not qualified; out of the jurisdiction or moved; temporarily out of jurisdiction; deceased; and the questionnaires not received.

Yesterday I asked the Court, and the Court allowed me, to show what would be the total in that particular precinct, and at this time Counsel has stipulated that we may offer in evidence——

Mr. Resner: Well, no, let me explain what I am willing to stipulate to.

Mr. Crockett: Well, let me finish explaining. I have gone through all the questionnaires, at least the folders containing the questionnaires, and

counted the total number that have been found qualified in each precinct, the total number that have been classified as questionable in each precinct, the total number exempt, and so forth in each of the precincts which have been covered by the questionnaires, showing then the total number of persons who have received questionnaires throughout the County with the total number that are qualified or have been classified as qualified by the Jury Commissioners.

The Court: My understanding, aside from the table—is my understanding similar to Counsel's memory and understanding of the testimony of Judge Wirtz on the stand that a fly leaf, or fly leaves with each of these precinct files of questionnaires that had been gathered together from the questionnaires sent out [537] had been tentatively tabulated, showing, first, on one of those fly leaves the names that had been unquestioned by the three Commissioners as qualified; and second, a list of those in which the fly leaf said, "Questionable," but that was a nomination of a list of names that they were not settled in their minds as to their qualifications for further duty; that on the third list were gathered together those names that showed on the returns of the questionnaires those who claimed their exemptions; a further list of those who for reasons appearing somewhere in their discussions they listed as "Not Qualified"; and another list in connection with the other topics on the pre-

cincts to which these questionnaires at that time had been sent out. Is that Counsel's understanding?

Mr. Resner: I understand that, too, Judge, and what I told Mr. Crockett I am willing to stipulate to is this—that if these different files of questionnaires were gone through, the tabulations would come out as they appear on the paper passed on to the Court. But I don't want to be taken to stipulate that we agree with the fact that those who are marked, "Qualified," are in fact qualified, or those who are marked, "Questionable," are questionable, or that any of the conclusions otherwise reached are in fact proper conclusions.

The Court: I understand that these files in themselves and the present condition of them are things [538] that you are not admitting but are only in there to show what the Commissioners did as reflecting upon their actions in trying to get a jury.

Mr. Resner: Yes, it shows that, Judge. We don't stipulate to anything of a substantive character here.

The Court: That is to say merely if the files were meticulously inspected and examined one by one, that the tabulation would be approximately as shown on this sheet.

Mr. Resner: The additions would come out this way.

The Court: Yes. It may be received and marked the Prosecution's next letter.

Deputy Clerk: Prosecution's Exhibit "C."

The Court: "C."

Mr. Crockett: If the Court please, for the information I intended to have a heading on this, but the stenographer omitted a heading on it——

The Court: Summary of questionnaires.

Mr. Crockett: May I be allowed—I will ask the Clerk to put that on there—"Summary of Questionnaires."

If the Court please, the Prosecution has no further evidence.

Mr. Resner: Does this last paper have a number?

Deputy Clerk: Prosecution's Exhibit "C."

The Court: "C."

Mr. Resner: Mr. Uchiyama is here now. Will you take the stand? [539]

TADAO UCHIYAMA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Tadao Uchiyama.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Honolua, Lahaina, Maui.

Q. And what is your occupation?

(Testimony of Tadao Uchiyama.)

A. Truck driver.

Q. Are you a member of the ILWU?

A. Yes.

Q. Are you an officer of the group at Honolua?

A. Yes, I am the president.

Q. You are the president. And what unit or branch is that?

A. Unit 8, Agricultural Division.

Q. How long have you lived at Honolua?

A. Eleven years.

Q. And are you familiar with all the people who live there at Honolua? A. Yes.

Q. Now, I want to show you Defendants' Exhibit 13, which is the 1946 register of male voters. Are you familiar with the names that appear on that paper? A. Yes.

Q. And have you gone over that paper? [540]

A. Yes.

Q. And are you familiar with the work and jobs that all those people have? A. Yes.

Q. And would you say that the jobs which are opposite each of those names are the jobs those people have? A. Yes.

Q. Do you know that of your own knowledge?

A. Yes.

Q. You know these people? A. Yes.

Q. Yes, you know them?

(Witness nodding.)

Q. I show you a second list which says, "Members of the ILWU." You have gone through that

(Testimony of Tadao Uchiyama.)

list, have you? That is Defendants' No. 14. You know those people, too, Mr. Uchiyama?

A. Yes.

Q. Are they all members of the ILWU?

A. Yes.

Q. And you know where they all work?

A. They all work—some have gone.

Q. What?

A. Some gone to Honolulu just lately.

Q. But when that list was made up, did those people work in the place that is marked opposite their names? A. Yes. [541]

Q. I see practically all of them worked at Baldwin Packers. A. Yes.

Q. Is that right? A. Yes.

Q. Do you know this of your own knowledge?

A. Yes.

Q. The list shows that all of them worked at Baldwin Packers except three which are P. M. Company. What is that? A. Pioneer Mill.

Q. And all the rest are Baldwin Packers. I will offer these, 13 and 14, in evidence, if your Honor please.

Cross-Examination

By Mr. Crockett:

Q. Where is Honolua?

Witness: That is about eight miles from Lahaina town.

Q. How long did you say you have lived there?

A. Eleven years.

(Testimony of Tadao Uchiyama.)

Q. Is Honolua precinct just one village or do the people live in one place—or scattered around?

A. Majority live one place.

Q. Live where? A. Near one place.

Q. Honolua was originally a camp just for the Baldwin Packers workers, wasn't it? [542]

A. Yes.

Q. So that practically everybody out there except a few county employees are Baldwin Packer employees? Isn't that a fact? A. Yes.

Q. Just roughly speaking, how many people would you say who live at Honolua are not employed at Baldwin Packers?

A. I would say about fifteen. Fifteen or twenty.

Q. Showing you the list which has been marked Exhibit 13, there are numerous persons mentioned here—for instance, store clerk, tractor driver, and others—are they also Baldwin Packer employees?

A. Yes.

Q. And the first two, Louis Ah Sing and Philip Ah Sing, mentioned as farmers—what about them?

A. They are from Honokohau Valley.

Q. And where you mentioned county employees, that is the County of Maui? A. Yes.

Q. So except for those persons, farmers and county employees, all the rest are employees of Baldwin Packers? A. Yes.

Mr. Crockett: That is all.

Mr. Resner: I offer those two exhibits in evidence your Honor—13 and 14.

(Testimony of Tadao Uchiyama.)

The Court: They may be received with the same number they carried for identification. [543]

Mr. Resner: That is all, Mr. Uchiyama.

(Witness excused.)

Mr. Crockett: We have nothing further, if the Court please.

Mr. Resner: I should like to offer—I have served Counsel an Amendment to Defendants' Challenges and Motions in Re Grand Jury Panel and Array, and if your Honor please, this is purely to conform to proof—to describe the defendants in the case pursuant to the testimony they gave on the stand—that is, the occupation and nationality—or, race.

The Court: The amendment may be marked and filed.

Mr. Resner: If your Honor please, that completes the showing on behalf of the defendants in the case.

The Court: Are Counsel ready for argument now?

Mr. Resner: Well, I should like to ask the Court's leave to argue at 1:30.

The Court: With a little preparation you might get it in order?

Mr. Resner: Better in order than it is now, Judge.

The Court: That sounds reasonable. Any objection to it?

Mr. Crockett: Will the Court reconvene at 1:30 or two o'clock?

The Court: 1:30.

(The Second Circuit Court recessed at 11:32 a.m.) [544]

(The Second Circuit Court reconvened at 1:30 p.m.)

Mr. Crockett: If the Court please, at the time the Court took a recess, we stated that we had no further evidence to offer, but during the recess while checking up, I find that the Minutes relative to the drawing of the grand jurors was offered—presented by the Court as the Court's Exhibit 2 and marked by the Clerk for identification. I was under the impression that that was an exhibit and not merely for identification. At this time, may I ask——?

The Court: Is there any objection to its being made a full exhibit of the case?

Mr. Resner: No, your Honor. I understand it is the Court's exhibit?

The Court: Yes. But I wanted you to have an opportunity to object, if you desire. The document may take the same number as the exhibit in the case.

Mr. Crockett: And may I also, if the Court please, be permitted to offer in evidence the certified copy of the full Charge which was given to the Grand Jury at the time when the 1947 grand jurors were first called for their March session. The Court referred to portions of the Charge to the Grand Jury yesterday when instructing the Grand Jury, and I think it valuable to the record to have the entire Charge go in.

